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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
	:	Case No. 23-10322 (JPM)
ELETSON HOLDINGS, INC.,	:	
	:	
Debtor.	:	

OBJECTION OF JACKSON WALKER LLP AND ROYSTON, RAYZOR, VICKERY & WILLIAMS, L.L.P. TO ELETSON HOLDINGS INC.'S MOTION FOR ENTRY OF A FURTHER ORDER IN SUPPORT OF CONFIRMATION AND CONSUMMATION OF THE COURT-APPROVED PLAN OF REORGANIZATION

Jackson Walker LLP and Royston, Rayzor, Vickery & Williams, L.L.P. (collectively, the "Law Firm Respondents") hereby file this objection (the "Objection") to the motion [Dkt. 1605] (the "Motion") of Eletson Holdings Inc. (with respect to periods before the effective date of the chapter 11 plan (the "Plan") confirmed in this case, the "Debtor" and with respect to periods thereafter, the "Reorganized Debtor") seeking sanctions and other related relief against, among others, the Law Firm Respondents and their clients. In support of their Objection, the Law Firm Respondents respectfully state as follows:

PRELIMINARY STATEMENT

The Motion seeks to punish the Law Firm Respondents for representing their clients and prevent them from continuing to represent their clients, in an ongoing non-bankruptcy challenge

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to a September 29, 2023 arbitral award (the "Arbitral Award")[1] which determines, among other things, who owns the preferred membership units (the "Preferred Shares") that control Eletson Gas LLC ("Eletson Gas").[2] The Arbitral Award found that the Debtor never owned the Preferred Shares. The Debtor initially sought to confirm the Arbitral Award in an Article III court and was at least partially successful in that endeavor before the Plan proposed by certain of the Debtor's creditors was confirmed. The Reorganized Debtor now seems to all but ignore the very existence of the Arbitral Award, taking positions in this Court that are contrary to the detailed findings made by the arbitrator.

Of critical importance here, the District Court[3] has confirmed the Arbitral Award in part,[4] leaving undisturbed the finding that the Preferred Shares (the controlling interests in Eletson Gas) had been transferred to the Cypriot Nominees[5] as of March 11, 2022 *and were never owned by the Debtor*. *See* **Exhibit B** to the Behlmann Declaration at p. 123–24 ("The Court confirms the [Arbitral] Award as stated in Dkt. No. 67-58, beginning on page 95 . . . with the following exceptions . . . ."). None of the stated exceptions included the findings that the Preferred Shares were transferred to the Cypriot Nominees in March 2022 and were never owned by the Debtor. The former owner of the Preferred Shares, Levona Holdings Ltd. ("Levona"), is currently

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1 A true and correct copy of the Arbitral Award is annexed as **Exhibit A** to the *Declaration of Andrew D. Behlmann in Support of Objection of Jackson Walker LLP and Royston, Rayzor, Vickery & Williams, L.L.P. to Eletson Holdings, Inc.'s Motion for Entry of a Further Order in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization* (the "Behlmann Declaration") submitted herewith.

2 Ownership of the Preferred Shares gives the holder thereof the right to appoint three of the five members of the board of Eletson Gas.

3 "District Court" refers to the United States District Court for the Southern District of New York.

4 *See* Case No. 23-cv-07331, *Eletson Holdings, Inc. and Eletson Corp. v. Levona Holdings Ltd.* (the "SDNY Case"). True and correct copies of the District Court orders partially confirming the Arbitral Award and subsequently modifying its initial order are annexed as **Exhibit B**, **Exhibit C**, **Exhibit D**, and **Exhibit E** to the Behlmann Declaration.

5 The Cypriot Nominees are Fentalon Limited, Desimusco Trading Limited, and Apargo Limited. The arbitrator found that the Preferred Shares "were transferred to the Preferred Nominees, effective as of March 11, 2022, and the Preferred Nominees are permitted transferees under the LLCA." Arbitral Award, p. 96.

challenging the Arbitral Award in multiple forums, but no court has disturbed these findings. Thus, there is no clear and unambiguous order (or any order at all) that supports sanctions against the Law Firm Respondents. In the face of the Arbitral Award, the District Court's confirmation of the findings in the Arbitral Award regarding the March 11, 2022 transfer of the Preferred Shares to the Cypriot Nominees (including the finding that the Preferred Shares were never owned by the Debtor), the absence of any final order of any court finding otherwise, and the Plan confirmed in this case, the Reorganized Debtor has no legitimate basis to assert that it controls Eletson Gas or the subsidiaries thereof.

Despite these indisputable facts, the Reorganized Debtor is attempting a flagrant end-run around the Arbitral Award by seeking to unilaterally dictate, without any determination or order, that it now somehow controls Eletson Gas and by asking this Court to trample the due process rights of the Law Firm Respondents' clients by coercing the Law Firm Respondents to cease representing their clients in defense of Levona's multi-fronted attacks. Under a flawed theory of the corporate governance of Eletson Gas, the Reorganized Debtor and the persons in control of it have filed the Motion as if the dispute over who controls Eletson Gas has been conclusively resolved in their favor or does not exist. That is not the case at all. This Court should not countenance the Reorganized Debtor's blatant misinterpretation of the Plan and order confirming the Plan [Dkt. 1223] (the "Confirmation Order") as a pretext to thwart non-debtor parties' due process rights and prevent the Law Firm Respondents from representing their clients in ongoing non-bankruptcy challenges to the contractually binding Arbitral Award.

The Court previously entered its Stay Relief Order[6] modifying the automatic stay to permit the arbitration process to proceed. Now that Levona and the Reorganized Debtor are under common control, the Reorganized Debtor appears to be taking the position that the Stay Relief Order nullifies the Arbitral Award such that Levona never lost control over Eletson Gas. This issue is a cornerstone of Levona's, and now the Reorganized Debtor's, ongoing (but thus far unsuccessful) attacks on the Arbitral Award and on the Law Firm Respondents' representation of their clients in connection with the ongoing dispute over control of Eletson Gas.

Proving civil contempt requires demonstrating that (1) a "clear and unambiguous" order exists, (2) "the proof of noncompliance is clear and convincing," and (3) "contemnor has not diligently attempted to comply in a reasonable manner." *Paramedics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 655 (2d Cir. 2004). The Reorganized Debtor has not credibly alleged, nor can it satisfy its burden of demonstrating, that *any* of these factors have been met here. To the contrary, the Motion is not even clear about which provision of what order the Law Firm Respondents are allegedly violating. Only in the supplement to the Motion [Dkt. 1627] does the Reorganized Debtor first even attempt to argue that by defending their clients[7][8] against vessel arrest proceedings in the Southern District of Texas (the "Texas Arrest Proceedings"), the Law Firm Respondents are "interfering with various proceedings that [the Reorganized Debtor] (and others) had instituted" to protect their alleged interests in vessels owned

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6 The "Stay Relief Order" refers to this Court's April 17, 2023 *Stipulation and Order Granting Alleged Debtor's Motion for Relief from Stay to Proceed with, or to Confirm the Inapplicability of, the Automatic Stay to Prepetition Arbitration Proceedings* [Dkt. 48].

7 The Law Firm Respondents' clients include Kithnos Special Maritime Enterprise ("Kithnos SME"), Kithira Gas Shipping Company ("Kithira Gas"), and Ithaki Gas Shipping Company ("Ithaki Gas"), none of which are domiciled or have business operations in the United States.

8 Levona continues to assume (though tacitly) in its pleadings that Kithnos SME, Kithira Gas, Ithaki Gas, and the vessels controlled by those entities, are assets of the bankruptcy estate, but they are not. They are not subsidiaries of any Debtor, nor are they controlled by any Debtor. These entities are non-U.S. entities who did not file proofs of claim, appear in this case, or otherwise avail themselves of or subject themselves to this Court's personal jurisdiction.

by other, non-debtor entities. Dkt. 1627 ¶ 1. Legitimately opposing a baseless legal action through a proper defense of a client's due process rights is anything but clear and convincing evidence of noncompliance with a court order. To hold otherwise would ignore the substantial evidentiary burden the Reorganized Debtor bears to prove contempt and would risk discouraging lawyers in any future disputed proceedings from vigorously defending their clients' rights.

Even though Kithnos SME, Kithira Gas, and Ithaki Gas are not subsidiaries of the Reorganized Debtor and are not controlled by the Reorganized Debtor, and despite the fact that the Reorganized Debtor has no right to control Eletson Gas, the Motion claims the Law Firm Respondents' appearances in the Texas Arrest Proceeding are improper because they were not "authorized by the Company." In turn, the Motion creatively—but unilaterally, without the benefit of any determination by any court, and contrary to the findings in the Arbitral Award—defines "the Company" as "Eletson Holdings, Inc. or any of its affiliates and/or subsidiaries, including" the Law Firm Respondents' clients. *See* Motion, p. 1. The glaring flaw in this logic is that under the relevant operating agreement for Eletson Gas (the "Eletson Gas LLCA"),[9] the Reorganized Debtor does not and cannot control Eletson Gas or any subsidiaries thereof. In other words, the Reorganized Debtor is not entitled to identify itself as, or act on behalf of, Eletson Gas or as (or on behalf of) any subsidiary of Eletson Gas. Wishful definitions in the Motion cannot undo the clear language of the Eletson Gas LLCA or the corporate governance rights and roles defined thereby. The ongoing challenge to the Arbitral Award does not nullify the Arbitral Award or the Eletson Gas LLCA, and most certainly does not demonstrate any element of contempt.

The Confirmation Order governs only the Reorganized Debtor and its interests in property. As such, the Plan and Confirmation Order do not, and cannot, impact property outside the scope

[9] The Eletson Gas LLCA is the *Third Amended and Restated Limited Liability Company Agreement of Eletson Gas LLC* dated as of August 16, 2019, which is annexed as **Exhibit F** to the Behlmann Declaration.

of the Debtor's bankruptcy estate. At most, property of the estate might include the Reorganized Debtor's *wholly owned and wholly controlled* subsidiaries, but Eletson Gas is neither, despite the Reorganized Debtor's false statements to the contrary. The Reorganized Debtor owns no equity in Kithnos SME, Kithira Gas, or Ithaki Gas—each of these entities is a wholly-owned subsidiary of Eletson Gas. The equity in Eletson Gas is divided into controlling membership units (the "Preferred Shares") and non-controlling membership units (the "Common Shares"). The Reorganized Debtor only owns the Common Shares and therefore has no right to control Eletson Gas or its wholly-owned subsidiaries under the Eletson Gas LLCA.

The Reorganized Debtor's only arguable path toward asserting control over Eletson Gas is that Levona[10] never lost ownership and control of the Preferred Shares. Even if this argument—which the Law Firm Respondents' and their clients vigorously dispute and which flies in the face of the Arbitral Award—were correct, the Preferred Shares still would not be property of the Debtor's bankruptcy estate and thus there still could be no violation of the Confirmation Order. The Reorganized Debtor (and, by extension, Levona and Murchinson) cannot simultaneously argue opposite sides of the same coin.

Finally, the Reorganized Debtor's purported evidence of corporate authority consists of a mere series of nullities. These concocted consents and other documents (Exhibits 5 and 14–18 to the declaration of Bryan M. Kotliar, Esq. in support of the Motion (the "Kotliar Declaration") [Dkt. 1606]) violate the Eletson Gas LLCA, fail to reconstitute the board of Eletson Gas, and fail to strip the persons validly appointed by the Cypriot Nominees in accordance with Eletson Gas LLCA of

[10] Levona is a special purpose vehicle that was created in October 2021 to hold Murchinson's interests (the Preferred Shares) in Eletson Gas. Specifically, by an agreement dated November 5, 2021, Blackstone transferred its preferred interests in Eletson Gas to Levona, by which it became a party to the Eletson Gas LLCA in Blackstone's place. The Arbitral Award confirmed that as of March 11, 2022, the Preferred Shares had been transferred from Levona to the Cypriot Nominees.

their authority to act on behalf of Eletson Gas, and therefore on behalf of the Law Firm Respondents' clients. Consequently, the Plan and Confirmation Order do not clearly and unambiguously—or at all—determine or otherwise alter the ownership of the Preferred Shares, any direct or indirect subsidiaries of Eletson Gas (including Kithnos SME, Kithira Gas, and Ithaki Gas), or any vessel controlled by any direct or indirect subsidiary of Eletson Gas. There is no basis to find the Law Firm Respondents in contempt of the Confirmation Order because no provision of the Confirmation Order (i) prohibits the Law Firm Respondents from acting on behalf of their clients (to the extent such a provision could even be enforceable) or (ii) prevents the Cypriot Nominees from continuing to defend against Levona's and the Reorganized Debtor's multi-forum attempts to exercise control over the Preferred Shares in Eletson Gas as an end-run around the Arbitral Award and the Eletson Gas LLCA.

I. There Is No Clear and Unambiguous Order That Prohibits the Law Firm Respondents from Defending Their Clients in the Texas Arrest Proceedings.

No court has ruled on Levona's challenge to the Arbitral Award's findings that the Cypriot Nominees own the Preferred Shares as of March 11, 2022, and no court has entered an order that (clearly and unambiguously, or at all) prohibits any party—especially counsel retained to represent a party—from defending against Levona's and the Reorganized Debtor's efforts to forum shop and bypass the enforceable arbitration requirement in the Eletson Gas LLCA. To the contrary, the District Court has confirmed the findings in the Arbitral Award that the Preferred Shares were transferred to the Cypriot Nominees on March 11, 2022 and were never owned by the Debtor. The Eletson Gas LLCA prohibited the Debtor, and prohibits the Reorganized Debtor, from taking unilateral action on behalf of Eletson Gas. Because of the Reorganized Debtor's failure to comply with the Eletson Gas LLCA, the concocted corporate governance documents on which the Reorganized Debtor bases its purported corporate authority are void, as discussed below.

Consequently, the Reorganized Debtor did not succeed in reconstituting the board of directors of Eletson Gas or any subsidiaries thereof. To the contrary, the Law Firm Respondents' clients remain the persons with ultimate control of Eletson Gas by virtue of their ownership of the Preferred Shares and thus had and continue to have all requisite corporate authority to engage the Law Firm Respondents and defend against the improper Texas Arrest Proceedings.

A. Control of the Eletson Gas Board

The current operating agreement for Eletson Gas is the Eletson Gas LLCA.[11] The Eletson Gas LLCA is amended in part by *Amendment No. 1 to the Third Amended and Restated Limited Liability Company Agreement of Eletson Gas, LLC* dated as of April 16, 2020 (the "LLCA Amendment").[12] Page 5 of the Eletson Gas LLCA defines a "Class B-2 Period" as the period before the Preferred Shares are redeemed (exchanged for payment). The Preferred Shares have not been redeemed or paid back, so the parties to the Eletson Gas LLCA are in the "Class B-2 Period."

The Eletson Gas board of directors (the "Eletson Gas Board") has "the sole right to manage and control the business, operations and affairs" of Eletson Gas. Eletson Gas LLCA, § 3.1(a). During the Class B-2 Period, the holders of the Preferred Shares (the "Preferred Holders") are entitled to designate three directors (defined in section 3.3 of the Eletson Gas LLCA as the "BX Directors") to the Eletson Gas Board. Eletson Gas LLCA, § 3.3(a). The holder of the Common Shares, the Reorganized Debtor, is entitled to designate only two directors (defined in section 3.3 as the "Eletson Directors") to the Eletson Gas Board. "Only the Designating Member who originally designated a Director may remove such Director" from the Eletson Gas Board. Eletson Gas LLCA, § 3.3(a).

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[11] A true and correct copy of the Eletson Gas LLC is annexed as **Exhibit F** to the Behlmann Declaration.

[12] A true and correct copy of the LLCA Amendment is annexed as **Exhibit G** to the Behlmann Declaration.

Section 3.4(b) of the Eletson Gas LLCA provides: "The presence of at least two Eletson Directors and two BX Directors at a duly noticed meeting of the Board shall constitute a quorum." Eletson Gas LLCA, § 3.4(b). Generally, "every action or resolution done or made by the [Eletson Gas] Board shall require only the majority vote of all the Directors." LLCA Amendment, § 1(d) (amending section 3.4(c) of the Eletson Gas LLCA). For the Eletson Gas Board to act "without a meeting, without prior notice, and without a vote" during the Class B-2 Period, it must act via written consent signed by "at least three (3) Directors (including at least one BX Director)." *Id.* (emphasis added).

Finally, section 3.3(c) of the Eletson Gas LLCA provides that during the Class B-2 Period, the Preferred Holders "shall be permitted to appoint a majority of the members of the board of each Subsidiary (including each Shipco)," which includes Kithnos SME, Kithira Gas, and Ithaki Gas. Eletson Gas LLCA, § 3.3(c).

Based on these clear terms of the Eletson Gas LLCA, the Reorganized Debtor lacks authority to unilaterally remove any director appointed by the Preferred Holders from the Eletson Gas Board. Eletson Gas LLCA, § 3.3(a). Thus, Eletson Gas may not act without either (a) a properly noticed meeting of the Eletson Gas Board where at least two BX Directors (directors appointed by the Preferred Holders) are present or (b) a written consent signed by at least three directors, where at least one of the three directors is a BX Director. LLCA Amendment, § 1(d). **In other words, (i) Eletson Holdings's designees to the Eletson Gas Board cannot cause Eletson Gas to act without the participation of at least one director appointed by the Preferred Holders, and (ii) Eletson Holdings cannot remove any director appointed by the Preferred Holders and thus cannot unilaterally reconstitute the entire board, or a majority thereof, of Eletson Gas or any of Eletson Gas's Subsidiaries.**

Exhibit 5 to the Kotliar Declaration is a November 19, 2024 "Omnibus Written Consent of the Parent" (the "Parent Consent") signed by "Eletson Holdings, Inc. in its capacity as the sole shareholder, or the controlling shareholder, as applicable, of the companies listed in Exhibit A attached hereto and any of and all other wholly-owned or controlled companies." [Dkt. 1606, Ex. 5]. The Motion argues that the Debtor, by virtue of the Parent Consent, unilaterally directed Eletson Gas to remove all of its then-current directors and officers. However, under the Eletson Gas LLCA, the Debtor had (and the Reorganized Debtor has) no power to direct Eletson Gas to do anything. The Parent Consent is a meaningless document with no force or effect as to Eletson Gas and its wholly owned subsidiaries and is the "poisonous tree" from which all of the other purported—and equally invalid—corporate documents flow.

B. The Parent Consent Fails to Direct Eletson Gas to Do Anything.

Exhibit A to the Parent Consent lists Eletson Gas as an entity of which the Reorganized Debtor purports to be the sole or controlling shareholder. However, the Reorganized Debtor does not wholly own or control Eletson Gas and is not the sole or controlling shareholder of Eletson Gas. The Reorganized Debtor cannot simply unilaterally decree any of these facts to be true in violation of, and contrary to the express language of, the Eletson Gas LLCA.

The Parent Consent "directs the removal and revocation of the appointment of all directors and officers of each of the Companies [on Exhibit A] and their subsidiaries." [Dkt. 1606, Ex. 5]. Again, the Reorganized Debtor cannot grant itself powers the Eletson Gas LLCA does not expressly provide for. At best, the Parent Consent directs the removal of directors and officers of the wholly owned or controlled subsidiaries of Eletson *Holdings*, but was of no force or effect with respect to the directors and officers of Eletson *Gas*.

C. The Holdings Consent Cannot Direct Eletson Gas to Do Anything.

Exhibit 14 to the Kotliar Declaration is a November 29, 2024 document titled "Action by Written Consent of the Common Unit Holder of Eletson Gas LLC" (the "Holdings Consent"). The Holdings Consent purports to remove the directors on the Eletson Gas Board that were formerly appointed by the Debtor. The Eletson Gas LLCA does not prohibit this action, as the Debtor has the sole right to remove and replace any directors it validly appointed to the Eletson Gas Board (but no others).

The problem with the Holdings Consent is its false statement that the Eletson Gas Board is composed of Mark Lichtenstein, Eliyahu Hassett, Joshua Fenttiman, and Adam Spears (collectively, the "Levona Former Directors") on behalf of the Preferred Holders. This attempt to reconstitute the Eletson Gas Board is void because the Reorganized Debtor had no authority under the Eletson Gas LLCA to remove a director that it did not appoint. As determined in the Arbitral Award nearly a year before the Holdings Consent was signed, the Cypriot Nominees became the Preferred Holders as of March 11, 2022, and were then entitled to remove the Levona Former Directors—which they documented on February 26, 2024.[13]

D. Exhibit 15 to the Kotliar Declaration Is Not Signed by the Requisite Directors of Eletson Gas.

At the "direction" of the Parent Consent, and armed with the Holdings Consent to "corroborate" their fabricated control of the Eletson Gas Board, the Levona Former Directors and Leonard Hoskinson (the Common Shares' designee to the Eletson Gas Board) executed Exhibit 15 to the Kotliar Declaration, which is titled "Eletson Gas LLC Action by Unanimous Written Consent of the Board of Directors" (the "Disputed Consent"). In the Disputed Consent, the former Levona-

[13] *See* Cypriot Nominees' Directors Appointment (defined below), which is annexed as **Exhibit H** to the Behlmann Declaration.

appointed directors of Eletson Gas purport to remove the previous officers of Eletson Gas and replace them with Leonard Hoskinson as Chief Executive Officer. The Disputed Consent was signed in November or December 2024. The Disputed Consent fails to constitute a valid act of Eletson Gas because the former Levona-appointed directors were no longer on the Eletson Gas Board and the Disputed Consent was not signed by any legitimate BX Directors.

The Arbitral Award, which found that the Preferred Shares were transferred to the Cypriot Nominees as of March 11, 2022, was issued over a year before the Disputed Consent was created. The arbitrator further found, and this finding has never been vacated or modified,[14] that "As of March 11, 2022, Respondent Levona had no membership interest in the Company, Eletson Gas." Arbitral Award, p. 95. The arbitration proceeded pursuant to this Court's Stay Relief Order, and the Arbitral Award is the result of a valid agreement to arbitrate in the Eletson Gas LLCA and thus is binding on Levona. Eletson Gas LLCA, § 12.14. The District Court never modified or vacated this finding of the Arbitral Award.

Levona and the Reorganized Debtor (though it is barely mentioned in footnote 10 of the Motion) nonsensically argue that Levona never lost ownership of the Preferred Shares because under this Court's Stay Relief Order, the Arbitral Award can be completely ignored. The Stay Relief Order does not clearly and unambiguously—or at all—require or even entitle parties to flatly ignore the Arbitral Award. In fact, this Court was asked in December 2023 (after the Arbitral Award was issued) to modify the Stay Relief Order "to provide that, 'until further order of this Court, (a) the Arbitration and related confirmation proceedings are stayed…" yet this Court declined to do so.[15]

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[14] *See* **Exhibits B–E** annexed to the Behlmann Declaration, confirming the Arbitral Award in part in each instance.

[15] *See Memorandum Opinion and Order Denying the Official Committee of Unsecured Creditors' Motion to Modify the Court's Prior Order Granting Relief from the Automatic Stay* [Dkt. 348] (Jan. 4, 2024) annexed as **Exhibit I** to the Behlmann Declaration, at p. 4.

The Parent Consent, the Holdings Consent, and the Disputed Consent were not included in any Plan Supplement and therefore are not incorporated into the Plan or otherwise approved by the Confirmation Order. The fact that these consents were signed by the Reorganized Debtor does not automatically make them part of, or enforceable pursuant to, the Plan or the Debtor's restructuring transaction. Even if any of these consents had been incorporated into the Confirmation Order itself, they still would be of no force or effect because the actions purportedly taken thereunder were not permitted by the Eletson Gas LLCA—and they certainly would not magically transform assets held by non-debtors, such as the Preferred Shares held by the Cypriot Nominees and the ships owned by subsidiaries of Eletson Gas, into property of the Debtor's estate. The Reorganized Debtor's baseless arguments to this Court (and others) that it took control of Eletson Gas by virtue of the Confirmation Order are contrary to the text of the Plan and Confirmation Order and fail to provide a basis for a finding of contempt.

E. Exhibits 16–18 to the Kotliar Declaration Are Ineffective to Change the Boards of the Eletson Gas Subsidiaries.

Each of Exhibits 16 (Kithnos SME), 17 (Kithira Gas), and 18 (Ithaki Gas) to the Kotliar Declaration are signed by Leonard Hoskinson, under his supposed "authority" as CEO of Eletson Gas via the Disputed Consent, which was invalid because it was not signed by any BX Directors. The Holdings Consent and the Parent Consent are ineffective to cure this fatal defect. Exhibits 16 through 18 to the Kotliar Declaration were therefore ineffective to change the officers or directors of Kithnos SME, Kithira Gas, and Ithaki Gas.

F. The Stay Relief Order Does Not Clearly and Unambiguously Prohibit the Law Firm Respondents from Representing Their Clients.

The Arbitral Award found (and the District Court has confirmed[16] this finding) that Levona transferred the Preferred Shares to the Cypriot Nominees as of March 11, 2022. Thus, as of March 11, 2022, the right to appoint BX Directors vested in the Cypriot Nominees as the holders of the Preferred Shares, and Levona ceased to be entitled to appoint designees to the Eletson Gas Board. The replacement of Levona's former directors was recorded in a February 26, 2024 written Notice of Removal and Appointment of New Directors to Eletson Gas LLC (the "Cypriot Nominees' Directors Appointment").[17][18] Thereafter, the BX Directors on the Eletson Gas Board were and remain Eleni Chatzieleftheriadi, Konstantinos Kertsikoff, Adrianos Psomadakis-Karastamatis, and Maria Biniou. Under the Eletson Gas LLCA: (i) no meeting of the Eletson Gas board could have a quorum without at least two of the foregoing individuals present (Exhibit 1 Section 3.4(b)), and (ii) no written consent of the Eletson Gas board can be valid unless it is signed by at least one of the foregoing individuals (Exhibit 2 § 1(d) (amending section 3.4(c) of the Eletson Gas LLCA)). Any action purportedly taken by Eletson Gas after March 11, 2022 (or at the latest, after February 26, 2024) without the requisite participation by the BX Directors is invalid. Thus, Exhibit 5 and Exhibits 14 through 18 to the Kotliar Declaration are all invalid as purported acts of Eletson Gas and no court has held otherwise.

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[16] *See* **Exhibit B** to the Behlmann Declaration, at p. 123 ("The Court confirms the Award as stated in Dkt. No. 67-58, beginning on page 95…with the following exceptions…").

[17] A true and correct copy of the Cypriot Nominees' Directors Appointment is annexed as **Exhibit H** to the Behlmann Declaration.

[18] The recording of the replacement of the Levona Former Directors on the Eletson Gas Board as late as February 26, 2024, happened *before* the Reorganized Debtor purportedly but invalidly "directed" the removal of all former directors and officers of Eletson Gas and Eletson Gas's wholly owned subsidiaries on November 29, 2024 through December 2, 2024.

With the participation of the BX Directors, Eletson Gas validly appointed board members and officers of Kithnos SME, Kithira Gas, and Ithaki Gas, in accordance with those entities' respective governing documents and the Eletson Gas LLCA. The President of each of Kithnos SME, Kithira Gas, and Ithaki Gas engaged the Law Firm Respondents on their behalf.

The Arbitral Award is the result of a valid agreement to arbitrate in the Eletson Gas LLCA. Eletson Gas LLCA, § 12.14. The Arbitral Award "has legal force only because the parties have elsewhere promised to be bound by it." *N.Y. State Nurses Assoc. Pension Plan v. White Oak Global Advisors, LLC*, 102 F.4th 572, 595–96 (2d Cir. 2024); *see also Stafford v. Int'l Business Machines Corp.*, 78 F.4th 62, 68 (2d Cir. 2023) ("An unconfirmed award is a contract right . . . "). Whatever the exact nature of the stay of the Arbitral Award may be, the award itself still binds Levona as a party to the Eletson Gas LLCA and the arbitration.

This Court has not ruled on whether the Stay Relief Order negates the Arbitral Award's findings regarding ownership of the Preferred Shares. The Reorganized Debtor argues that the Stay Relief Order entitles it and Levona to pretend the Arbitral Award does not exist at all. The Law Firm Respondents have advanced good faith arguments to the contrary on behalf of their clients. For instance, *after the Arbitral Award was issued*, this Court was asked to enter an order stating that the Stay Relief Order prohibited confirmation of the Arbitral Award. In denying that relief, this Court clarified that the Stay Relief Order "requires the Arbitration Parties to abstain from *executing* on the Final Award absent further order of this Court."[19] Levona has a pending motion to vacate the Arbitral Award, despite arguing in multiple courts that the Arbitral Award has zero effect whatsoever. There is no order (and certainly not the Confirmation Order) that adopts

[19] *See Memorandum Opinion and Order Denying: (I) Motion in Limine; (II) Motion to Exclude; and (III) Motions to Appoint a Chapter 11 Trustee* [Dkt. 721] (May 29, 2024) annexed as **Exhibit J** to the Behlmann Declaration, at p. 37 (emphasis added).

Levona's interpretation or prohibits Eletson Gas from acting through the Eletson Gas Board comprised of the individuals designated by the Cypriot Nominees.

An ongoing dispute exists as to the extent of the Stay Relief Order, which has not been resolved on a final basis (although certain portions of the Arbitral Award have been confirmed in a manner favorable to the Law Firm Respondents' clients). Nevertheless, the Stay Relief Order does not even purport to govern the conduct of the Law Firm Respondents, as its reach is expressly limited to the "Arbitration Parties," a defined term that does not include Kithnos SME, Kithira Gas, or Ithaki Gas. The Law Firm Respondents have properly represented the interests of their clients and made good faith arguments about the meaning of the Stay Relief Order on behalf of their clients, who have a due process right to defend litigation that threatens their interests, such as the Texas Arrest Proceedings. There is no evidence—much less clear and convincing evidence—that by defending their clients' interests in litigation, the Law Firm Respondents have violated any order, especially the Confirmation Order.

II. The Preferred Shares in Eletson Gas Are Not Property of the Debtor's Estate.

Annexed as **Exhibit K** to the Behlmann Declaration is the Debtor's Amended Schedule A/B [Dkt. 340] ("Schedule A/B"). In response to question 15 on Schedule A/B (interests in other entities/businesses), the Debtor attached a list of all interests it held in other businesses.[20] The Debtor listed "Eletson Gas LLC (100% of common shares)" in its Schedule A/B but did not list ownership of the Preferred Shares (because it did not own them). Under the Eletson Gas LLCA, ownership of the Common Shares is insufficient to control the Eletson Gas Board.

[20] *See* **Exhibit K** to the Behlmann Declaration, at p. 8–11.

The Debtor's admitted lack of ownership of the Preferred Shares is further supported by the Disclosure Statement[21] for the Plan that was ultimately confirmed—the Plan that was filed by the Petitioning Creditors (as defined in the Disclosure Statement) who now control the Reorganized Debtor. Beginning on page 88, the Petitioning Creditors describe recoveries under a chapter 7 liquidation. At page 94, the Disclosure Statement shows the four vessels that were owned by Eletson Holdings, **none of which are the Vessels controlled by clients of the Law Firm Respondents**. The only vessels and SMEs that were property of the Debtor's estate are the four specific vessels and their respective SME entities listed in the Disclosure Statement, **none of which are the clients of the Law Firm Respondents**. *See* Disclosure Statement, pp. 94–96; 103 ("Reorganized Holdings will derive operating revenue primarily from the operation of four MR class product tankers…").

The Preferred Shares were not owned or acquired by the Debtor during the pendency of the bankruptcy case, were not scheduled by the Debtor, and were not disclosed as assets in the Disclosure Statement for the Plan that was ultimately confirmed. The Preferred Shares simply are not property of the bankruptcy estate.

By their terms, the Plan and Confirmation Order did not (as they could not) transfer ownership of the Preferred Shares in non-debtor Eletson Gas, nor of any assets that were not property of the estate. Levona and the Petitioning Creditors repeatedly argue in the Texas Arrest Proceedings that "crucially," section 5.2 of the Plan vests property in the Reorganized Debtor. It is true that section 5.2 of the Plan vests "interests **held by the Debtors** in their respective non-debtor direct and indirect subsidiaries and Affiliates," but this language is clearly limited to

[21] *See Amended Disclosure Statement in Support of Petitioning Creditors' Amended Joint Chapter 11 Plan of Reorganization of Eletson Holdings Inc. and Its Affiliated Debtors* [Dkt. 847] (the "Disclosure Statement"), annexed as **Exhibit L** to the Behlmann Declaration.

interests "held by the Debtors." Plan, § 5.2(c) (emphasis added). With respect to Eletson Gas, those interests include the Common Shares, but not the Preferred Shares. If there was ever any intent to attempt to vest the Reorganized Debtor with more than what was in the Debtor's estate, the parties who now control Eletson Holdings had the pen, and the Plan they drafted deals solely with assets "held by the Debtors." Plan, § 5.2(c).

Similarly, section 5.4 of the Plan cancels "all notes, stock, . . . and other documents evidencing or giving rise to Claims against and Interests **in the Debtors**," ***not*** the interests of third parties in non-Debtor Affiliates. Again, the parties presently seeking sanctions against the Law Firm Respondents had the pen, and they limited this provision to interests in the Debtors. The Plan and Confirmation Order could not cancel third parties' interests in Eletson Gas or its wholly owned subsidiaries even if the Debtors wanted to, as rewriting the Eletson Gas LLCA by fiat would have far exceeded this Court's jurisdiction and authority. The Reorganized Debtor's argument is essentially that the Plan rewrites the Eletson Gas LLCA and eliminates the Preferred Shares in Eletson Gas, which the Plan cannot and does not do.

At the very least, the Plan does not clearly and unambiguously strip anyone of ownership of the Preferred Shares (or even purport to do so), as the Preferred Shares were not disclosed in any document as being property of the Debtor's estate. The Law Firm Respondents' arguments on this issue were made in good faith and do not violate any clear and unambiguous order (or any order) of this Court or any other.

III. There Is No Basis to Find the Law Firm Respondents in Contempt of Any Order.

None of the elements of contempt are met with respect to the Law Firm Respondents. There is no order of any court that conclusively interprets the Stay Relief Order in Levona's favor or removes the ability of Kithnos SME, Kithira Gas, and Ithaki Gas to hire the counsel of their choice to protect their rights and interests. While Levona continues to challenge the Arbitral

Award, there is no order of any court that disturbs the findings that the Preferred Shares were transferred to the Cypriot Nominees as of March 11, 2022 and that the Debtor never owned the Preferred Shares. And there is certainly no order of any court, including the Confirmation Order, that purports to vest the Preferred Shares in the Reorganized Debtor. The rights of the Law Firm Respondents and of their clients, Kithnos SME, Kithira Gas, and Ithaki Gas, have not been stripped by any final order of any court. Retaining counsel to defend those rights does not violate any order of this Court or any other.

While the Reorganized Debtor seems to assert that the Law Firm Respondents are violating the Confirmation Order or the Stay Relief Order, the Law Firm Respondents are not representing Eletson Holdings and have not contested the effectiveness of the Plan's transfer of the equity in Eletson Holdings to the Petitioning Creditors. The Law Firm Respondents only represent wholly owned subsidiaries of Eletson Gas, over which the Reorganized Debtor has no power and certainly not unilateral control. There simply has been no "interference" with any rights of the Reorganized Debtor by the Law Firm Respondents. The Law Firm Respondents are not violating *any* order because Eletson Holdings does not have the right to control Eletson Gas, which is the entity with ultimate control over the Law Firm Respondents' clients. All three elements of contempt are blatantly absent here. Accordingly, the Motion must be denied as to the Law Firm Respondents.

CONCLUSION

WHEREFORE, the Law Firm Respondents request that the Court deny the Motion.

Dated: May 6, 2025

Respectfully Submitted,

LOWENSTEIN SANDLER LLP

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May 2025, I served a true and correct copy of the foregoing via the CM/ECF Filing System to all known counsel of record registered to receive service thereby.

/s/ Michael S. Etkin

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
	:	Case No. 23-10322 (JPM)
ELETSON HOLDINGS, INC.,	:	
	:	
Debtor.	:	

DECLARATION OF ANDREW D. BEHLMANN IN SUPPORT OF OBJECTION OF JACKSON WALKER LLP AND ROYSTON, RAYZOR, VICKERY & WILLIAMS, L.L.P. TO ELETSON HOLDINGS INC.'S MOTION FOR ENTRY OF A FURTHER ORDER IN SUPPORT OF CONFIRMATION AND CONSUMMATION OF THE COURT-APPROVED PLAN OF REORGANIZATION

Pursuant to 28 U.S.C. § 1746, I, Andrew D. Behlmann, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. I am a partner at the law firm of Lowenstein Sandler LLP, counsel for Jackson Walker LLP and Royston, Rayzor, Vickery & Williams, L.L.P. (collectively, the "Law Firm Respondents").

2. I submit this declaration in support of the Law Firm Respondents' *Objection of Jackson Walker LLP and Royston, Rayzor, Vickery & Williams, L.L.P. to Eletson Holdings Inc.'s*

Motion for Entry of a Further Order In Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization (the "Objection") filed simultaneously herewith.[1]

3. Attached hereto as **Exhibit A** is a true and correct copy of the Arbitral Award.

4. Attached hereto as **Exhibit B** is a true and correct copy of the *Opinion and Order* dated February 9, 2024 in *Eletson Holdings, Inc., et al. v. Levona Holdings, Ltd.*, Case No. 23-cv-7331 (LJL) (S.D.N.Y.).

5. Attached hereto as **Exhibit C** is a true and correct copy of the *Amended Opinion and Order* dated April 19, 2024 in in *Eletson Holdings, Inc., et al. v. Levona Holdings, Ltd.*, Case No. 23-cv-7331 (LJL) (S.D.N.Y.).

6. Attached hereto as **Exhibit D** is a true and correct copy of the *Errata Order* dated April 19, 2024 in *Eletson Holdings, Inc., et al. v. Levona Holdings, Ltd.*, Case No. 23-cv-7331 (LJL) (S.D.N.Y.).

7. Attached hereto as **Exhibit E** is a true and correct copy of the *Order* dated February 14, 2025 in in *Eletson Holdings, Inc., et al. v. Levona Holdings, Ltd.*, Case No. 23-cv-7331 (LJL) (S.D.N.Y.).

8. Attached hereto as **Exhibit F** is a true and correct copy of the Eletson Gas LLCA.

9. Attached hereto as **Exhibit G** is a true and correct copy of the LLCA Amendment.

10. Attached hereto as **Exhibit H** is a true and correct copy of the Cypriot Nominees' Directors Appointment.

11. Attached hereto as **Exhibit I** is a true and correct copy of the January 4, 2024 *Memorandum Opinion and Order Denying the Official Committee of Unsecured Creditors' Motion to Modify the Court's Prior Order Granting Relief from the Automatic Stay* [Dkt. 348].

[1] Capitalized terms not defined herein shall have the meanings ascribed in the Objection.

12. Attached hereto as **Exhibit J** is a true and correct copy of the May 29, 2024 *Memorandum Opinion and Order Denying: (I) Motion in Limine; (II) Motion to Exclude; and (III) Motions to Appoint a Chapter 11 Trustee* [Dkt. 721].

13. Attached hereto as **Exhibit K** is a true and correct copy of Schedule A/B.

14. Attached hereto as **Exhibit L** is a true and correct copy of the Disclosure Statement.

I declare under penalty of perjury that the foregoing information is true and correct to the best of my knowledge, information, and belief, and I understand that I am subject to punishment if any of the foregoing statements made by me are willfully false.

Dated: May 6, 2025

LOWENSTEIN SANDLER LLP

/s/ Andrew D. Behlmann
Andrew D. Behlmann, Esq.

EXHIBIT A

EXHIBIT 1

JAMS ARBITRATION
NEW YORK, NEW YORK

Eletson Holdings, Inc., et al.,

Claimants,

and **JAMS Ref. No. 5425000511**

Levona Holdings Ltd.,

Respondent.

FINAL AWARD

I. INTRODUCTION

1. Parties and Counsel: The parties to this arbitration are identified in the caption and are represented as follows:

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5. The claims are set forth in a certain "Demand for Arbitration Form," dated July 29, 2022, and in a certain "Statement of Claims," dated July 29, 2022, with exhibits attached thereto. Respondent submitted "Levona Holdings LTD's Response to Statement of Claims and Statement of Counterclaims," with exhibits, dated August 19, 2022. Respondent also submitted a Letter, dated September 5, 2022. Claimant then submitted a Letter, dated September 5, 2022.

6. This arbitration is brought pursuant to a certain "Eletson Gas, LLC, Third Amended and Restated Limited Liability Company Agreement," dated July 29, 2022 ("LLCA"). The arbitration provision is contained in subsection 12.14(a), page 69 of the LLCA. The parties

disagree as to the scope of this arbitration provision and the arbitrability before JAMS of some of the claims.

This Final Award is based upon a review of all the pleadings in this arbitration proceeding, as well as the submissions that follow that were considered by the undersigned arbitrator. The submissions and the exhibits attached thereto that were reviewed and considered are as follows: "Claimants' Pre-Hearing Statement of Position Pursuant to JAMS Rule 20(b) and Procedural Order No. 5 ¶ 8," dated May 5, 2023 ("Claimants' Rule 20(b) Statement"); "Respondent Levona's Rule 20(b) Statement of Counterclaims and Defenses to Eletson's Statement of Claims," dated May 5, 2023; "Claimants' Post-Hearing Submission," dated June 9, 2023 ("Claimants' Post Hearing Brief"); "Claimants' Proposed Order," dated June 9, 2023; "Respondent's Post Trial Brief and Statement of the Record," dated June 9, 2023 ("Respondent Post Trial Brief"); and "Respondent's Proposed Order," dated June 9, 2023. In addition, I heard and considered the testimony at an arbitration hearing that was held on May15, 16, 18, 19, 22, 23, and 24.

I also heard closing arguments on June 13, 2023. I reviewed and considered the transcripts of the arbitration hearing and closing arguments which contain the testimony of the witnesses and the colloquy and arguments of counsel on various substantive and procedural issues. I reviewed and considered the exhibits admitted with the post-hearing submissions and the exhibits admitted at the arbitration hearing. In addition, I reviewed Eletson's Affirmation Supporting Fees, Costs, Expenses and Interest, with supporting exhibits and client affidavit, filed on August 11, 2023 ("Opening Affirmation); Levona's Affirmation in Response to Claimants' Affirmation in Support of Its Motion for Fees, filed on August 25, 2023 ("Respondent's Affirmation"); and Eletson's Reply Affirmation in Further Support of Fees, Costs, Expenses and Interest, with supporting client affidavit, filed on September 1, 2023 ("Reply Affirmation").

On July 28, 2023, I issued an Interim Award in this arbitration. Subsequently, counsel for Levona requested corrections to the Interim Award pursuant to Rule 24(j) of the JAMS Comprehensive Rules and Procedures ("JAMS Rules") and on August 15, 2023, I issued a Corrected Interim Award ("Corrected Interim Award") clarifying that in Section VII.B.4 of the award: "The entities referred to in B.1 and B.2 respectively shall also be awarded pre-judgment interest on the principal amount of the compensatory damages in paragraph B.1."

This Final Award adopts, incorporates, and republishes the Corrected Interim Award in its entirety amending the Corrected Interim Award only as necessary to make certain ministerial and stylistic edits, and to integrate the undersigned arbitrator's subsequent determinations regarding the Claimants' request for attorneys' fees, costs, expenses and interest. Section VII of the Corrected Interim Award entitled Conclusion and Corrected Interim Award is not reproduced here for the sake of brevity and clarity, although the findings and legal conclusions contained in that section are adopted here in their entirety in Section VIII of this Final Award entitled Conclusion and Final Award.

The Corrected Interim Award resolved all issues submitted for decision in this arbitration, except as expressly reserved therein, relating to the amount of Claimants' attorneys' fees, costs, expenses, and pre-judgment interest. The undersigned arbitrator in

this Final Award has considered and resolved all the issues and arguments raised relating to the merits of the claims, counterclaims, requests for attorneys' fees, costs, expenses, and pre-judgment interest. Any argument not addressed in this Final Award was found to be unavailing, without merit, academic, or unnecessary to reach.

The undersigned arbitrator recognizes and appreciates the high quality of the presentations by counsel for each party. The result of this decision is not a reflection on any difference in the quality of those presentations, but of the arbitrator's review of the record.

II. BACKGROUND OF THE DISPUTE AND SUMMARY OF CLAIMS AND COUNTERCLAIMS

A. Parties and Relevant Facts

Claimant Eletson Holdings, Inc. ("Holdings") is a corporation formed under the laws of Liberia, which holds the common shares in Eletson Gas LLC (the "Company") (J-1.0005 and J-01.0084.) Claimant Eletson Corporation ("Eletson Corp") (together with Holdings, "Eletson") is formed under the laws of Liberia, and among other things, is a special member of the Company responsible for the provision of management services for the vessels owned directly or indirectly by the Company. Holdings is the parent company of Eletson Corp. (*See* C-1963, J-1.0085.) Eletson is owned by three principal families, which are the families of Laskarina Karastamati ("Karastamati"), Vassilis Kertsikoff ("Kertsikoff"), and Vasilis Hadjieleftheriadis ("Hadjieleftheriadis"), each of whom hold various officer positions in the Eletson entities.

On October 22, 2013, Holdings announced the creation of the Company, a $700 million liquefied petroleum gas shipping joint venture of Holdings and funds managed by Blackstone Tactical Opportunities ("Blackstone"). (C-1774, C-1964 ¶ 9; C-1963 ¶ 17.) Blackstone was the preferred shareholder of the Company. (J-1.0084.) Eletson contributed five medium-size gas carriers to the creation of the Company. (C-1774.) Additionally, in 2020, Eletson contributed approximately $5.5 million in liquidity support to the Company. (May 16, 2023 Transcript p.336:4-17.)

From 2013 to 2021, Blackstone was the preferred shareholder of the Company (May 16, 2023 Transcript pp. 23:20-24; 77:18-25.) From 2013 to the present, Holdings was the common unit holder of the Company. (C-1964 ¶ 11; C-1963 ¶19.)

On August 16, 2019, Eletson and Blackstone entered into the Third Amended and Restated Limited Liability Company Agreement, dated August 16, 2019. On April 16, 2020, Eletson and Blackstone entered into Amendment No. 1 to the Third Amended and Restated Limited Liability Company Agreement. (J-2.) Collectively, the August 16, 2019 agreement and the April 16, 2020 Amendment are referred to as the "LLC Agreement" or "LLCA". The LLCA regulates the relationship among the holders of membership interests in the Company. (*See* J-1.)

At the beginning of 2022, the Company owned, directly or indirectly, 14 liquefied petroleum gas carriers. (C-1963 ¶ 21; C-1964 ¶ 13.) The Eletson fleet is the second largest in the market—second only to Unigas, Eletson's primary competitor (C-1963 ¶ 21; C-1964 ¶ 13) ("Unigas is one of Eletson's key direct competitors").) The Company's revenues are primarily derived from the operation of the vessels (C-1963 ¶ 20; C-1964 ¶ 14.) Eletson Corp is responsible for the provision of management services for the vessels owned by the Company through subsidiaries. (C-1963 ¶ 9; May 18, 2023 Transcript pp. 52:14-17.) For its management services, Eletson Corp is paid management fees from the vessel subsidiaries. (May 16, 2023 Transcript pp. 243:3-18; 334:3-16.) The management fees are an asset of Eletson Corp and a liability for the Company or the relevant subsidiaries incurring the expense. (May 16, 2023 Transcript pp. 334:19-25.) All throughout Eletson's partnership with Blackstone, Eletson managed the vessels (C-1963 ¶ 9.)

In early 2021, Blackstone sought to sell its interest in the Company. Blackstone and Murchinson, an alternative management firm that manages funds on behalf of

institutional investors, signed a Confidentiality and Non-Disclosure Agreement on or around January 25, 2021 ("NDA".) (J-36.) The NDA states that the parties "desire to exchange certain proprietary or confidential information for the purpose of exploring a possible negotiated direct investment opportunity . . . in connection with certain LPB Shipping assets owned or operated by Eletson Gas LLC." (*Id.*) The NDA provides further that the "Confidential Information will be used solely for the purpose of evaluating, financing and executing the Opportunity . . . and will not be disclosed by the Receiving Party or its Representatives except (i) as may be consented to by the Disclosing Party." (J-36.001.) Under the NDA, Murchinson agreed not to "directly or indirectly contact or communicate with any of Eletson's employees, lenders, lessors, customers, suppliers, or any other person with whom Eletson has a business relationship, or to seek any information in connection therewith from such person, without the express written consent of Blackstone." (J-36.0002.)

At some point in time, Murchsinson and Blackstone reached a deal, whereby Murchsinson would purchase 100% of Blackstone's interests in Eletson Gas for an initial investment of $3 million. (C-1782 p. 32:13-25.) Murchinson created a special purpose vehicle to hold these interests, Levona Holdings Ltd ("Levona")—the Respondent in this arbitration. Levona is 60 percent owned by Nomis Bay and 40 percent owned by BPY—two hedge funds. (C-802, C-1053.) Murchinson controls and manages Nomis Bay and BPY. On November 2, 2021, Blackstone assigned its interest in the Company to Levona and appointed the four representatives designated by Levona to the board of the Company. (J-12; C-033; C-051.) These directors were: Eliyahu Hasset ("Hasset"), Joshua Fenttiman ("Fenttiman"), Mark Lichtenstein (Lichtenstein"), and Adam Spears ("Spears").

For all meaningful purposes relevant to this Corrected Interim Award and the facts and circumstances giving rise to the claims at issue in these proceedings, Murchinson and Levona are one and the same. This will be discussed in more detail later in this Corrected Interim Award. "Levona-related entities" refers to Levona, Murchinson and Pach Shemen—also a special purpose vehicle with identical ownership as Levona, managed and controlled by Murchinson.

Shortly after acquiring the Blackstone interests, Eletson officers and Levona's representative, Adam Spears, began discussing a deal that would enable Eletson to buyout Levona's interests.

The parties entered into a Binding Offer Letter ("BOL") on February 22, 2022.

Section 2.1 of the BOL provided that:

> Subject to and in consideration of the Transfer occurring and the conditions set out in Clause 2.2 and 2.3, Levona hereby grants to Eletson Gas the option exercisable by written notice to Levona by both of them (an "Option Notice"), for either Eletson Gas or its nominee to purchase all the membership interests held by Levona in Eletson Gas (the "Option Membership Interests") for a consideration equal to the Purchase Option Consideration payable in cash on completion of the transfer of the Membership Interests to such account as Levona may nominate in writing. (J-06 § 2.1.)

The Purchase Option Consideration "shall be an amount equal to US$1 plus an amount equal to US$23,000,000 less the Net Value." (J-06 ¶ 3.2.) The Net Value "shall be based on a third party independent valuation of the [Symi and Teledos]." (J-06 ¶ 3.3(b).)

Following the execution of the BOL, on March 11, 2022, the parties entered into a series of agreements including the following: (i) the Intra-Group Loan Agreement, pursuant to which Levona provided the company a loan facility of up to $10 million for a term of up to two years (J-07); (ii) the Share Transfer Agreement, pursuant to which the Company transferred to Levona 100% of the shares of the Symi and Telendos (J-8); (iii) the

Assignment of Claims, pursuant to which Eletson Corporation assigned to Levona all of its claims relating to the management fees and liquidity support owed to it by the Company, or its subsidiaries (J-09); (iv) the Deed of Waiver and Release (C-0027); and (v) the Fundamental Action Letter (J-10) (collectively, the "Transaction Documents").

In April, the loan was amended to provide the Company with the ability to draw an additional $4 million. (C-24.)

On July 15, 2022, Levona entered into a Letter of Intent with Unigas, the main competitor of the Company, to sell the Company's fleet of vessels for $262 million ("Unigas LOI"). (J-019.)

B. Summary of Claims and Counterclaims

The resolution of the majority of the claims and counterclaims asserted in this arbitration rests upon the interpretation of the Transaction Documents. Did Eletson exercise the purchase option pursuant to the Transaction Documents? If the answer is "yes," then at some point in time, Levona was no longer a member of the Company and did not have any rights under the LLCA to enter into the Unigas LOI, or otherwise act on behalf of the Company. Conversely, if Eletson did not fulfill the requirements under the Transaction Documents to exercise the purchase option, Levona's interests were not bought out and Eletson may have violated its obligations under the LLCA by refusing to, *inter alia*, engage in due diligence relating to the Unigas LOI.

Eletson has asserted claims against Levona for breach of the LLCA and breach of the covenant of good faith and fair dealing. These claims can be grouped into four categories. First, Eletson asserts claims that Murchinson engaged in deceitful and wrongful conduct that voids *ab initio* its acquisition of Blackstone's preferred interests. Eletson claims that Murchinson bribed Eletson Corporation's CFO, Peter Kanelos, and caused him

to disclose confidential Company information before Murchinson's purchase of the preferred interests in the Company. Eletson also claims that Murchinson, in breach of the NDA with Blackstone, communicated directly with Company financiers and lenders, and engaged in industrial sabotage that led to the arrest of Company's vessels prior to Levona's acquisition of preferred interests. These claims will be referred to as the "Pre-Acquisition Claims." Eletson seeks damages, under a theory of rescissory damages, in connection with the harm it alleges it suffered as a result of these claims.[1]

Second, after acquiring Blackstone's interests, Eletson claims that Levona breached the LLCA in a number of ways. Immediately upon joining the Company, Eletson asserts that Levona breached the LLCA and the Company's management agreements by among other things, attempting to fire Eletson Corporation as the manager of the Company's or the Company's subsidiaries' vessels. In addition, Eletson claims that Levona failed to disclose its pre-acquisition misuse and breaches of confidential information, continued to conspire with Mr. Kanelos to liquidate and harm the Company, and conspired with the Company's counsel, Watson Farley Williams ("WFW") against the Company's interests. I will refer to these claims as the "Post-Acquisition/Pre-BOL Claims."

Eletson also alleges that the Levona-related entities violated the Status Quo Injunction (defined, *infra,*) on numerous occasions, including by wrongfully declaring the Company in default of the Loan made by Levona to the Company, trying to sell the Symi and Telendos, directing the purchase of a controlling position in debt securities of Holdings for the purpose of commencing litigation against Holdings and the involuntary bankrtupcy against Holdings ("Status Quo Injunction Claims").

[1] Eletson attempts to merge the Pre-Acquisition Claims into material breaches of the LLCA, but prior to November 2, 2021 when Blackstone sold its interests in the Company, neither Murchinson nor Levona were parties to the LLCA.

And finally, Eletson asserts claims for breach of the LLCA and breach of covenant of good faith and fair dealing against Levona for failing to acknowledge Eletson's compliance with the terms of the Transaction Documents, failing to transfer the preferred interests in the Company, and continuing to act on behalf of the Company in complete bad faith including by entering into the Unigas LOI.

In addition to declaratory relief, Eletson seeks compensatory damages of at least $71 million, punitive damages in the range of 3 to 9.63 times the compensatory damages, pre-judgment interest at ten percent per annum, costs, and attorney's fees.

Conversely, Levona asserts that through today, it remains the preferred interest holder. Accordingly, it seeks various declarations with respect to the rights it is afforded by virtue of the LLCA and/or the Fundamental Action Letter. It also seeks monetary damages allegedly arising from Eletson's failure to attend board meetings, which prevented the Company from refinancing certain debt and engage in due diligence in connection with the Unigas LOI. Levona also asserts a claim for tortious interference in connection with the Unigas LOI and conversion for denying Levona the ability to sell the Symi and Telendos. For all of its claims, Levona seeks compensatory damages of more than $3 million, plus an undefined amount that includes any profit it is due from the Company as preferred holder, and any decrease in net profit from the sale of the vessels as compared to the Unigas LOI. Levona also seeks $2 million in punitive damages, post-judgment interest, costs, and attorney's fees.

III. HISTORY OF THE PROCEEDINGS

The following events and rulings are relevant to this Final Award.

Eletson filed the initial Statement of Claims on or about July 29, 2022. Levona filed its Response to Statement of Claims and Statement of Counterclaims on August 19,

2022. In that Response, and in a subsequently filed Motion to Strike Certain of Claimants' Pleadings, Arguments, and Requests for Relief, dated, September 12, 2022 ("First Motion to Strike"), Levona challenged the jurisdiction of JAMS. Levona conceded that JAMS had jurisdiction to decide issues raised under the LLCA, including for example, issues related to Levona's calling of board meetings and Eletson's failure to attend them, Eletson's refusal to cooperate in due diligence for the Unigas sale, or Eletson's refusal to cooperate with other rights Levona may have. Levona, however, insisted that JAMS did not have jurisdiction concerning the majority of Eletson's claims because determining those claims required the arbitrator to enforce the parties' rights under the Transaction Documents, which Levona claimed needed to be arbitrated in London. (*See, generally* First Motion to Strike.)

On September 30, 2022, I ruled that JAMS has jurisdiction over the claims and counterclaims pursuant to Section 12.14 of the LLCA, and by reason of the affirmative claims Levona filed as counterclaims in this arbitration. (C-01813.)

The LLCA § 12.14(a) provides:

> Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof (including the determination of the scope or applicability of this agreement to arbitrate) shall be determined by arbitration in New York County in the State of New York or any other mutually agreeable location, before a single arbitrator. The arbitrator shall be selected by agreement of the parties. If the parties are unable to agree on an arbitrator within 15 days after the demand for arbitration is made, JAMS shall designate the arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The Federal Arbitration Act shall govern the interpretation and enforcement of such arbitration proceeding. The arbitrator shall apply the Law of the State of Delaware and the Republic of the Marshall Islands, as the case may be, in accordance with Section 12.13. (J-1.)

I ruled that "the arbitration provision in the LLC Agreement is broad, encompasses the claims asserted, and the parties agree that this arbitration provision was not replaced or

superseded by the arbitration [provision] in the Transaction Documents." (C-1813 p. 12.) I further found that "by filing counterclaims, Respondent availed itself of this forum, submitted to JAMS, and waived its jurisdictional challenges." (C-1813 p. 12.)

I reiterate and emphasize the waiver ruling, as Levona continues to insist that JAMS does not have jurisdiction to enforce the Transaction Documents.

Specifically, in its Post Trial Brief, Levona argues:

> The Option was not exercised. But, more importantly from a legal standpoint, an obligation to meet contract obligations external to the LLCA is not an obligation under the LLCA itself. As a result, not only is there no breach of contract but, the only way to find a breach of "good faith and fair dealing" is to look to the Transaction Documents—not the LLCA. *The Transaction documents are governed by English Law and are to be determined by either a British arbitration or court. Given that this Tribunal is not an expert in British Law, not seated in London, has heard no evidence or argument related to British Law,* ***and in fact does not have jurisdiction to enforce the Transaction Documents,*** this argument is outside the scope of this matter from a simple legal perspective.
> (Respondent Post Trial Brief pp. 55-56.)

However, Levona has itself sought relief for its counterclaims that I can only award if I interpret, enforce, and provide relief for pursuant to the Transaction Documents. For example, in its Proposed Order, Levona specifically requests declarations interpreting the Transaction Documents (e.g., a through f), for example, seeking a finding that Levona holds the preferred shares, and Levona further seeks a ruling awarding damages as a result of Eletson's conversion of the Symi and Telendos (e.g., b and c)—relief that depends on my interpreting and enforcing the terms of the Transaction Documents. It also asserted a claim for tortious interference with the Unigas LOI—which is not a claim for a breach of the LLCA. Thus, Levona has waived any jurisdictional objection concerning the claims and counterclaims.

On October 10, 2022, I entered a Temporary Restraining Order, pending a decision on the parties' cross-motions for preliminary injunctive relief ("TRO"). The TRO

confirmed the oral Order rendered during the October 7, 2022 conference, and specifically provided that "during the pendency of this Temporary Restraining Order the parties hereto shall maintain the status quo and shall not, among other things: (1) engage in the transfer or sale of any assets of Eletson Gas LLC (the "Company") absent the joint written consent of the parties, which shall be sent to the undersigned Arbitrator; or (2) notice or conduct of any board meetings for the purposes of proposing or considering transfer or sale of any assets of the Company." (C-1816.)

On November 7, 2022, I clarified the parameters of the "status quo" (C-1838.) Levona argued that the TRO did not apply to "the sale of the Symi and Telendos" because "those vessels are not assets of … Eletson Gas." (C-1838.) I made clear that "Respondent's interpretation of the TRO is incorrect. By its terms, the TRO directed the parties to 'maintain the status quo.' Any attempt to sell or otherwise transfer the Symi and Telendos vessels will be deemed to be in violation of the TRO." (C-1838.)

On January 12, 2023, I then issued a decision on the parties' cross-motions for preliminary injunctions and entered a Preliminary Injunction, extending the TRO's prohibition on actions upsetting the status quo until further notice. (C-1887.)

The Preliminary Injunction stated:

> The parties hereto shall maintain the status quo and shall not, among other things: (a) engage in the transfer or sale of, or attempt to sell or otherwise transfer, any assets of Eletson Gas LLC (the "Company"), or assets in dispute in this arbitration, absent the joint written consent of the parties, which shall be sent to the undersigned Arbitrator; or (2) notice or conduct of any board meetings for the purposes of proposing or considering the transfer or sale of any assets of the Company or other assets in dispute in this arbitration. (C-1887 p. 26.)

The Preliminary Injunction was to "stay in effect until amended by subsequent order of the undersigned arbitrator" (C-1887 p. 26.) The TRO, the November

clarification, and the Preliminary Injunction collectively are referred to herein as the "Status Quo Injunction".

I also rendered various discovery rulings relating to Levona and Murchinson's communications with its law firm, Watson Farley & Williams ("WFW"). On December 12, 2022, I found WFW represented both Eletson and Levona in connection with the Transactions and that because of this dual representation, Levona was not permitted to withhold documents on the basis of attorney-client privilege. (C-1880 pp. 9-10.)

On March 6, 2023, I held a status conference and oral argument to address additional outstanding discovery disputes. During that conference, I made certain oral rulings ordering Respondent to produce various categories of documents. These oral rulings were subsequently memorialized in a March 10, 2023 email. With respect to WFW communications, I held as follows:

> With respect to any documents or communications relating to WFW withheld on the basis of attorney-client privilege, the privilege has been waived due to Respondent's failure to comply with Procedural Order No. 4, which required that it produce a log including certain specific information "identifying any document required to be produced in response to any previously made document requests and demands that it is withholding from production on the basis of privilege." Respondent misconstrued Procedural Order No. 4 as the order did not state that the parties were to specifically identify only those documents this tribunal previously compelled or ordered to be produced. Rather the plain meaning of the order read in its entirety demonstrates that any documents responsive to requests for production being withheld on the basis of privilege were to be identified specifically and those withheld on other bases could be logged categorically. Nor is there anything in prior rulings that would have placed a temporal limitation on my ruling finding that WFW jointly represented Levona and Eletson. If Respondent wanted to raise these issues, it could have done so, but first, it needed to identify the documents and communications at issue by logging them pursuant to Procedural Order No. 4.

On March 7, 2023, Pach Shemen—a special-purpose vehicle owned and directed by the same entities and representatives as Levona—was one of the petitioning creditors who commenced an involuntary bankruptcy petition against Eletson Holdings. (C-749; C-

751; C-746.) As a result of this filing, Levona insisted that the Bankruptcy Court's automatic stay applied to these proceedings. Claimant emphatically disagreed, but on March 10, 2023, by an order issued by email, I stayed the instant arbitration proceedings "pending further order or notice from the Bankruptcy Court for the Southern District of New York." I did so despite Claimants' objections, in part, because Respondent insisted that continuing with the arbitration proceedings, and/or any compliance with orders of this tribunal, would violate federal law. In other words, they would not comply with any further rulings by me or appear at the evidentiary hearing, which at that time, was scheduled to commence on April 24, 2023, and continue for thirteen days.

In staying the proceedings, however, I reminded the parties that, "pursuant to the arbitration agreement requiring the parties to in good faith work towards an evidentiary hearing within 150 days, if the Bankruptcy Court shall find that this arbitration is not stayed, I will take the steps necessary to ensure timely completion of this arbitration and order the immediate completion of the pending and near term deadlines for document production and the exchange of expert reports. In the event the Bankruptcy Court denies a stay, any party that fails to comply with these deadlines may be subject to preclusion." (March 10, 2023 Email Order.)

On April 17, 2023, by stipulation and order of the court, the Bankruptcy Court lifted the Automatic Stay. (C-00781; LEV214.) I held a status conference that same day and this arbitration resumed. At this April 17th conference, the parties agreed to dates for the evidentiary hearing, which, at that time, was to commence on May 8, 2023, and continue for ten days.

On May 3, 2023, by email, the parties entered into a stipulation, pursuant to which they agreed, *inter alia*: to abbreviate the hearing schedule and split the hearing time equally

between them. The parties futhte stipulated that "the schedule is fair and reasonable and [they] waive any objection to the schedule ordered or otherwise determined by the Arbitrator. The parties stipulate that each has no challenge or objection to the arbitration on fairness grounds or on the basis that it has not been granted enough time to prepare for or present its case." This stipulation was memorialized in Procedural Order No. 6, dated May 6, 2023.

On May 5, 2023, the parties served their JAMS Rule 20(b) submissions. In their submission, Claimants stated that "The preferred interests at issue in this arbitration, from their issuance up until the execution of the BOL and even thereafter, were never owned or controlled, directly or indirectly, by Holdings, Eletson Corporation, the Company, or any other entity directly or indirectly affiliated with any of these entities. (Claimants' Rule 20(b) Statement ¶ 100.) Rather, from "January 2022, at the latest, the families owning or controlling the Eletson holdings in the Company determined to nominate three entities independent of Holdings, Eletson Corporation, the Company, or any other entity directly or indirectly affiliated with any of these entities to hold the preferred interests." (Claimants' Rule 20(b) Statement ¶103.) The three entities are Cypriot entities by the names of Fentalon, Apargo, and Desimusco ("Preferred Nominees"). (*Id.*) Each of the three Preferred Nominees is related to one of the three principal Eletson families. In response to this claim, on May 10, 2023, Respondent filed its Motion to Strike Claimants' New Allegations of the Transfer of the Preferred Shares to the Preferred Nominees, or in the Alternative, to Dismiss Claimants' Claims in Chief ("May 10, 2023 Motion to Strike or Dismiss").

Also on May 5, 2023, in addition to their JAMS Rule 20(b) submissions, the parties filed motions in limine. Eletson filed a motion in limine to bar Levona from using documents from Peter Kanelos as Eletson admissions. Levona's motion sought to exclude:

(1) extrinsic evidence relating to the BOL and Transaction Documents; (2) evidence unrelated to claimed breaches of the LLCA, including allegations of misconduct before and after Levona acquired its interest in the Company; (3) evidence related to the actions of Pach Shemen; and (4) correspondence between Levona and WFW. The parties opposed each other's motions on May 10, 2023.[2]

On May 12, 2023, I issued Procedural Order No. 7 addressing additional motions to compel. Relevant to this Corrected Interim Award I specifically ordered the following:

> Respondent has represented that it has produced all communications between Levona and WFW, but that it has not produced communications between Murchinson and WFW based in part on the grounds that Murchinson is a separate entity, with its own separate extension of the attorney-client privilege, and not under Respondent's or its counsel's control. However, throughout these proceedings, the information provided thus far gives the impression that Murchinson is substantially responsible for the creation of Levona. It has also been involved in this arbitration, including having the principal of Murchinson, Mr. Bistricer, attend depositions and potentially appear as a witness for Respondent at the evidentiary hearing. Moreover, in response to a prior ruling ordering the production of documents relating to Peter Kanelos, Respondent's counsel indicated that it was able to get Murchinson to voluntarily produce documents. Counsel is advised to make its best efforts to produce documents responsive to Claimants' request--specifically for relevant communications between Murchinson and WFW--or be prepared for the possibility of an adverse inference or other consequence, if circumstances shall warrant such action based on the evidence presented to me during the evidentiary hearing. (Procedural Order No. 7 p. 5.)

On May 12, 2023, three days before the commencement of the evidentiary hearing, Murchinson's separate counsel sent a letter regarding its production of communications with WFW, which it had still not provided. Insisting that it was not a party to this arbitration, Murchinson was willing to produce documents *in camera*, but had not yet produced the documents in this arbitration because it did not want such production to be a

[2] As will be addressed throughout this Corrected Interim Award, Levona's motion is denied. Eletson's motion is largely mooted—as discussed, *infra*, I have given any documents drafted by Mr. Kanelos appropriate weight.

waiver of its claimed attorney-client privilege. It urged me to reconsider my ruling in Procedural Order No. 7. After additional correspondence, I declined to do so.

First, Murchinson could not have it both ways—on the one hand, insist it wasn't a party to these proceedings and that therefore I lacked jurisdiction over it, but on the other hand, cherry-pick which documents to provide Levona to produce, and have its representatives actively appear and participate in status conferences, depositions, and the evidentiary hearing in this arbitration. Second, I disagreed with Murchinson's claim that it had not waived its attorney-client privilege. Finally, Murchinson's proposal to produce the documents *in camera* was unreasonable and unfeasible given that the evidentiary hearing had already commenced. Thus, by email order, dated May 17, 2023, subject to certain protections upon production, I reiterated my ruling that "Murchinson and WFW communications shall be immediately produced, or Levona should be prepared for the possibility of an adverse inference or other consequence, if circumstances shall warrant such action based on the evidence presented to me during the evidentiary hearing."

The evidentiary hearing proceeded on May 15, 16, 18, 19, 22, 23 and 24, 2023.

IV. PRELIMINARY MATTERS

A. Levona/Murchinson/Pach Shemen

In early 2021, Blackstone contacted Murchison about possibly acquiring its preferred interests. The evidence reflects that there is no correspondence between Blackstone and Levona relating to the acquisition of Blackstone's shares. All correspondence was between Murchinson and Blackstone, as Levona did not exist, and was created for the sole purpose of holding the acquired interests. Levona is owned by Nomis Bay and BPY, which in turn are managed and controlled by Murchinson. (C-802;

C-1053; May 22, 2023 Transcript p. 8:8-22; C-1782 (Deposition of Bistricer) pp. 19:22-20:19.)

It is undisputed that Levona does not have any employees. Similarly, it is undisputed that Levona does not have an email domain, its own bank accounts, or financial records of any kind that would reflect how it valued the preferred shares of the Symi and Telendos after the shares of those vessels were transferred to it. (May 22, 2023 Transcript pp 73:11-74:2.) Curiously, Murchinson's owner Mark Bistricer conceded that Murchinson kept financial records of Levona, but no financial records were exchanged in this arbitration or presented at the evidentiary hearing. Levona insisted throughout these proceedings that it does not have custody or control over Murchinson documents, and as a non-party to these proceedings, Murchinson did not have any obligation to produce documents. Yet, Murchinson did voluntarily produce some categories of documents.

Murchinson employees or agents, including its owner, Marc Bistricer ("Bistricer"), counsel, Mark Lichtenstein ("Lichtenstein"), and agent, Adam Spears ("Spears") also voluntarily appeared throughout these proceedings. It was presumably Bistricer/Murchinson who designated Hasset, Fenttiman, Lichtenstein, and Spears as Levona directors to sit on the Company's Board, as Levona has no employees. Bistricer, Spears and Lichtenstein all attended one or more depositions of Eletson witnesses in this arbitration. (*See, e.g.,* J-40 (Deposition of Lascarina Karastamati); J-41 (Deposition of Vassilis Kertsikoff).) Indeed, at several Zoom status conferences and arguments, "Murchinson" was one of the remote participants. Bistricer and Spears both voluntarily appeared for depositions in this arbitration. (C-1782; C-1783.)

Despite these facts, throughout these proceedings, Levona has insisted that Murchinson is a separate entity and not a party to these proceedings. The evidence

presented at the evidentiary hearing, however, demonstrates conclusively that although technically two separate corporate entities, Murchinson and Levona are not distinct for any purposes relevant to these proceedings. Levona, a shell entity, is controlled and directed by Murchinson. While Levona may be the named party, Murchinson is the real party in interest. Bistricer testified: "We bought from Blackstone their position in Eletson Gas . . . we bought everything.") (May 22, 2023 Transcript p. 7:20-8:3.) The documentary evidence further supports this. (*See, e.g.,* C-841 (Bistricer stating "Shareholders say Murchinson related entities. Levona Holdings is the SPV *we* made acquisition in.")(emphasis added); C-950 (discussing a loan of $2 million to the Company, Spears states, "this took a lot of work to get Marc [Bistricer] to agree to open his wallet."); C-1240 (Spears states "I have included . . . a background on Murchinson which is the firm behind the investment in Eletson Gas LLC.").) Murchinson's own counsel represented to third parties that Levona was owned and controlled by Murchinson. (C-1463 (email from WFW attorney, Saunders stating "Levona Holdings (an entity owned and controlled by Murchinson) . . .").)

Thus, any ruling I render in this arbitration extends to Murchinson. Any award in favor of Levona is really in favor of Murchinson, and similarly, any award finding liability and damages against Levona, is owed by Murchinson.

The same is true for Pach Shemen—another special purpose vehicle, with the identical ownership as Levona, directed by the same Murchinson representatives, including Spears and Lichtenstein, and seemingly created for the sole purpose of purchasing a controlling interest in the outstanding bond debt of Holdings so that three weeks later, it could direct the involuntary bankruptcy filing against Holdings. (C-751.)

Correspondence relating to the purchase of these bonds demonstrates how Pach Shemen is intertwined with, and indistinct from, Levona. In fact, "Levona II" was the

originally-contemplated name for the Pach Shemen entity. In a December 8, 2022 email from Spears to a selling bondholder, setting out the trade terms in connection with the purchase of these bonds, Spears promises the following to the selling bondholder:

> 2. $500k *if the arbitration ends* to ***our*** satisfaction on Eletson Gas and ***we*** can exercise our rights to act as Preferred to sell Eletson Gas vessels and/or the Company (Eletson Gas) without legal interference. 3. 10% of the value received by Levona for its Preferred Shares in Eletson Gas . . . 4. 1/3 of the first $3 million profit ***realized by the entity buying these notes (Levona II)*** . . . 5. Thereafter 25% of any profit realized by ***Levona II*** after the first $3 million profit . . . . (C-0746.0008 (emphasis added.)

Notably, Spears is promising potential monetary benefits received in connection with this arbitration, and any value relating to the preferred shares of the Company, as compensation in connection with the purchase of the notes by Levona II, which when subsequently created, was instead named Pach Shemen. If truly separate entities, how could Spears make such a promise? The answer is because the separateness is in name only. Pach Shemen and Levona are not distinct for any meaningful purposes relevant to these proceedings. They are alter egos of one another, with identical corporate ownership and management.

Accordingly, Ideny Levona's motion in limine to exclude evidence relating to Pach Shemen.

B. WFW and Peter Kanelos

i. Peter Kanelos

Peter Kanelos was the CFO of Eletson Corporation and a representative of the Company. The parties dispute whether he was also CFO of the Company. The evidence demonstrates that before it acquired the preferred interests from Blackstone, Murchinson was secretly communicating with Kanelos about strategies for (a) lowering the purchase price to acquire the Blackstone shares and (b) what to do with the assets of the Company

once Levona became the preferred holder. (C-1599; C-1600; C-1615; C-1616; C-1617; C-1618; C-1623; C-1625; C-1635; C-1638; C-1640; C-1641; C-1642; C-1647; C-1648; C-1649; C-1664; C-1960; C-2018.) Murchinson used Kanelos to acquire the Company's confidential information and to communicate that information to the Company's financiers, along with Murchinson's proposals, to refinance the Company's debt. (*See*, *e.g.*, C-463; C-1600; C-1615; C-1616; C-1618; C-1623; C-1640; C-1641; C-1642; C-1647; C-1648; C-1649; C-1664.)

Unbelievably, Kanelos, a long-time employee and confidant of the principals of the Eletson entities was promised compensation commensurate with the ultimate strategy Murchinson employed. For example, in an email dated October 1, 2021, Bistricer writes to Kanelos: "You will get 10% of whatever profit we make on this transaction, should it go forward. The 10% will be paid once we have received our capital back minus a reasonable return of capital." (C-1678.)

It is beyond cavil that Kanelos was acting contrary to his duties as an officer or representative of Eletson and the Company, and that he and Murchinson actively concealed their communications. In all of the above-cited correspondence, Kanelos intentionally used his personal gmail account, not his Eletson email address. In an October 31, 2021 email, Kanelos admitted that he was working on behalf of Murchinson's interest. "After sourcing the deal for Murchinson I have worked very hard for a year in your team's interest (and continue to do so even if the plan is to ultimately liquidate the company. *While I am happy to align my interests with Murchinson* . . . .") (C-1679, emphasis added.)

Murchinson and Kanelos both took active steps to conceal their clandestine communications. For example, on November 1, 2021, Lichtenstein sent Kanelos a "Confidential Summary of Terms" summarizing the compensation to be paid to Kanelos.

(C1680; C-1681.) Then just a few days later, on November 5, 2021, the day Levona became the preferred interest holder, Lichtenstein sent Kanelos an email to his Eletson address, attaching the notices of replacement of Blackstone directors, acting as if he had never met Kanelos. Addressing him formally, Lichtenstein writes: "Dear Mr. Kanelos, Nice to meet you. I have located your contact information on the Eletson website and am hoping you can be of assistance." (LEV025 p. 6.) There is also evidence that Kanelos would caution recipients of his emails not to disclose the communications or any negotiations to Eletson. (*See, e.g.*, C-1704.) As one example, on May 5, 2021, Kanelos sent an email from his gmail account, on behalf of Murchinson and stated that "[d]ue to the sensitivity of this deal ONLY use my Gmail to communicate to me." (C-567.)

After Levona became the preferred holder, Murchinson formalized its compensation arrangement with Kanelos in a certain Services Agreement, dated December 19, 2021. (C-1698; C-1699.) Levona/Murchinson followed through with its terms by wiring Kanelos $100,000 on December 21, 2021. (C-1700; C-1701.)

In an attempt to defend its secret communications with Kanelos both pre- and post-acquisition of Blackstone's interests, Levona has insisted that Kanelos was the CFO of the Company, not just Eletson Corporation, and that its communications with him were entirely proper as the preferred shareholder of the Company. Upon closer look, however, this argument quickly falls apart and only bolsters Eletson's assertions of impropriety. Even if he were the CFO of the Company, he was also the CFO of Eletson Corporation—he had duties to Eletson and his secret incentivization agreement with Murchinson was clearly a conflict of interest that was induced by Murchinson and never disclosed by anyone to Eletson. Moreover, the nature of the correspondence pre-November 2, 2021—before Murchinson/Levona had any claimed interest in the Company—makes it clear that Kanelos

was acting against the interests of the Company and was aligned with Murchinson. Accordingly, even if Kanelos was the CFO of the Company, this does not absolve Murchinson.

In fact, Levona's insistence that Kanelos was a representative of the Company, only serves to undermine its arguments that there was an attorney-client privilege between Murchinson and WFW.

ii. WFW

Throughout these proceedings, there has been a lot of discussion concerning the representation of WFW. Based on the evidence presented, separate offices of the firm represented both parties both pre- and post- Levona's acquisition of Blackstone's interests, including in connection with the Transaction Documents. The Athens Office represented Eletson and the London office represented Murchinson/Levona. WFW partner, George Paleokrassas, testified that he believed an appropriate ethical wall was in place to protect the propriety of this dual representation, although no documents were provided in support of this claim. (May 19, 2023 Transcript pp. 243:22-244:8.)

In attempt to preserve its claimed "attorney-client privilege," Murchinson argues that it was told by WFW that there was no conflict. While WFW represented that it would not have a conflict, WFW attorney Frank Dunne also stated that the firm had done work for Eletson Gas, knew the Company well, and that his "understanding [was] that [Murchinson was] looking at doing something at the shareholder level, which would not put my Firm on the other side of anything from you." (C-1973 p. 7.) This turned out not to be true, and Murchinson was well aware of this.

The main problem with any claim of attorney-client privilege between WFW and Murchinson is that Peter Kanelos climbed back and forth over this supposed ethical wall

numerous times and Murchinson/Levona knew this. Kanelos indicated in emails to Murchinson that he was working with WFW Athens in connection with pre-acquisition Murchinson strategies. (*See, e.g.,* C-1598; C-1614.) On May 26, 2021, attorney Karamacheras from WFW Athens sent Kanelos an email providing an analysis of the Company's restructuring of certain Company financing, pursuant to which WFW acted as the Company's counsel in 2020. Kanelos then forwarded this analysis to Murchinson and indicated that there was a "[n]eed to speak with Frank Dunne"—the attorney on Murchinson's side of the wall. (J-35.) Kanelos was also copied on communications from Dunne to Murchinson. For example, on June 13, 2021, Dunne sent an email to Murchinson, copying Kanelos at his gmail account providing an analysis to liquidate the Company. (C-465.)

Thus, Murchinson/Levona knew Kanelos was sharing Eletson "privileged" information with Murchinson and receiving Murchinson "privileged" information. Thus, Murchinson could not have reasonably had any expectation of privacy in its communications with WFW. Murchinson cannot on the one hand claim that Kanelos was the CFO of the Company, and on the other hand, claim attorney-client privilege with WFW-London when it is sharing communications with Kanelos. Thus, as per my prior rulings, any claim of attorney-client privilege has been waived by both Levona and Murchinson, based in part on the dual representation of the firm in connection with the Transactions, and Murchinson/Levona's inability to claim an expectation of privacy when it was knowingly providing WFW communications to Kanelos. (*See* Procedural Order Nos. 4, 7 and May 17, 2023 Email Order.) Thus, any communications between Murchsinon/Levona and WFW are admissible and Levona's motion in limine is denied.

Eletson asks me to go one step further and find that WFW conspired with Murchinson against the Company. However, WFW is not a party to these proceedings. What WFW knew or did not know, and what WFW may have done or not done, is outside my jurisdiction. I therefore decline to reach any conclusions with respect to the propriety of WFW's dual representation.

C. <u>The Preferred Nominees</u>

Eletson claims that if they fulfilled the obligations under the Transaction Documents and bought out Levona, the preferred interests were transferred to the "Preferred Nominees." Eletson witnesses testified that from the outset of the time that the parties began discussing the buyout of Levona's interests, Eletson intended the preferred units to go to nominees of the Company, and that it told Levona of this intention. (C-1963 ¶101; C-1964 ¶ 193.)

The parties confirmed this language in the BOL, which expressly provides that "Levona hereby grants Eletson Gas the option . . . for either Eletson Gas or its nominee to purchase all of the membership interests held by Levona in Eletson Gas . . . ." (J-6 ¶ 2.1.) Indeed, this issue was acknowledged and agreed to by the parties in correspondence relating to the proposed buyout. For example, on February 21, 2022, Kertsikoff responded to a draft of the BOL sent by Spears and states that in regards to Clause 2.1, "we also need to delete references to Eletson Corporation in this clause and allow for Eletson Gas 'or its nominee' to be the buyer of the interests." (C-107.) (*See, also,* J-14 (reflecting that Levona knew about the Company's intention to transfer the interests to nominees in a January 10, 2022 email from Spears stating "We agree that upon closing . . . Levona shall transfer to the Company or, as the case may be, its nominated affiliate . . . all of the Membership Interests.").) Indeed, Spears stated that Murchinson did not object to the Company's

"constitutional documents being amended upon completion so that all membership interests in the Company become common units . . . although we do see this as technically a post closing matter than can be agreed between the new shareholders without Levona's involvement." (J-14.) *See, E. I. Du Pont de Nemours & Co. v. Admiral Ins. Co.*, 1990 Del. Super. LEXIS 351, *17-18 (Del. Super. Ct. Sept. 19, 1990) (even where the parol evidence rule applies, it only applies to prior or contemporaneous evidence "offered for the purpose of varying or contradicting the terms of an integrated contract and does not exclude evidence offered for the purpose of interpreting and giving a meaning to those terms."); *see also Fox v. Paine*, 2009 Del. Ch. LEXIS 10, *17-18 (Del. Ch. Jan. 22, 2009) (even for unambiguous contract, court may "consult extrinsic evidence secondarily to confirm the 'conclusion that the contract language is unambiguous, evidencing . . . the shared intent of the parties' at the time of they entered the contract. Situations exists where the court may 'consult undisputed background facts to place the contractual provision in its historical setting without violating' the principle that the court not consider extrinsic evidence when interpreting an unambiguous contract") (footnotes omitted), aff'd, 981 A.2d 1172 (Del. 2009).

The evidence presented in this arbitration demonstrates that the Eletson families agreed to the contingent transfer. (*See* C-786; C-787; C-788; C-789; C-790.) This agreement would take effect immediately upon Eletson's exercise of the option, *i.e.* the transfer of the Symi and Telendos and the assignment of the claims. (C-1964 ¶¶ 194, 198; C-1963 ¶ 104; C-1968 ¶¶ 105-109.)

The initial discussions are corroborated by a note drafted by Kertsikoff's sister on January 10, 2022. (C-789.) The note informed Kertsikoff's mother that "our Cypriot [company] is about to acquire a new asset," and further stated, in part, that "as soon as

[Murchinson/Levona] leave, their position needs to remain outside the group" (C-789; C-1964 ¶ 197.) In early March 2022, Mr. Hadjieleftheriadis prepared a document memorializing the agreement to transfer the preferred shares, on a contingent and conditional basis, to the Cypriot companies, including the amount that was agreed to be paid. (C-1968 ¶ 105.) The document included the total estimate of the amount of the preferred shares and how those shares would be split among the three Cypriot companies. (C-787; C-1968 ¶ 105.) Mr. Hadjieleftheriadis also included information about the prospective sale of the assets that the three Cypriot companies own, and what percentage of the asset would be paid, which was €3 million. (C-787; C-1968 ¶ 105.)

Testimony and evidence reflect that on August 2, 2022, the three principal families owning or controlling the Eletson holdings in the Company had a meeting in Piraeus, Greece. (C-1968 ¶ 106.) During that meeting, the families discussed the contingent transfer of the preferred shares to the Preferred Nominees. (*Id.*) Mr. Andreoulakis, Eletson in-house counsel, took concurrent notes with this respect to this meeting. (C-786; May 16, 2023 Transcript p. 26:14-21.) The notes state, in relevant part, that Levona suddenly reneged on its exit obligations and maintained—albeit wrongly—that the preferred units remained under their control, even though Eletson had told Levona before the BOL was executed that the preferred units would go to nominees outside of the Company. Eletson did not tell them the names of the nominees but told them that it was not Eletson Holdings. (C-786; C-1963 ¶ 108.)

On October 11, 2022, the three principal families had another meeting. Again, the families discussed the agreement and that the Preferred Nominees would support the cost of the litigation as part of their obligations under the agreement. Mr. Andreoulakis took notes with respect to this meeting as well. (C-790; C-1963 ¶ 109; C-1968 ¶ 107.)

In October 2022, Mr. Hadjieleftheriadis forwarded to his brother and sister, through his secretary, the 2018 and 2019 financial statements of his Cypriot company, Desimusco (C-788.) The post-it note on the document stated: "Kostis/Helen please sign. I remind you that this company owns since March the 1/3 of the Blackstone share in Gas" (C-788; C-1968 ¶ 108.)

It is undisputed that Eletson raised this contingent transfer to Cypriot nominees for the first time in its Rule 20(b) submission on May 5, 2023. Accordingly, Levona then filed its May 10, 2023 Motion to Strike or Dismiss. I reserved decision on this motion.

I now deny Respondent's Motion to Strike or Dismiss.

While Levona cites statements made by Eletson witnesses or counsel in various filings in this arbitration that purportedly contradict Eletson's current stance, I disagree with Levona's interpretation of these statements. For example, Levona cites to statements made by Kertsikoff and Eletson's counsel that post-March 11, 2022, "Eletson held itself out as the sole shareholders of the Company." (*See* May 2023 Motion to Strike or Dismiss, pp, 2-4.) "Eletson" in this context, however, includes its affiliates. (*See, e.g.,* J-43 ¶ 1.) Both Karastamati and Kertsikoff testified at the hearing that the Preferred Nominees are affiliates of Eletson. (C-1963 ¶ 104; C-1964 ¶ 194.) In addition, at the evidentiary hearing, Karastamati testified "when we say Eletson we mean Eletson family, we mean Eletson affiliates, we mean Eletson family, Eletson Group . . . it is the common shares and the Eletson family." (May 16, 2023 Transcript pp. 150:15-151:2.)

While I acknowledge that the lack of earlier notice by Claimants to Levona of the contingent transfer of any preferred shares to the Preferred Nominees initially raised concern to me, the Eletson witnesses' testimony was both wholly credible and sincere. It is clear that even when Blackstone was the preferred holder, the Eletson witnesses viewed

the Company as a family company. In their day-to-day discussions, they may not have spoken in corporate formalities, however, there is nothing in the record supporting a determination that there was any bad faith or misconduct on their part. Moreover, representatives from each of the Preferred Nominees have testified that they are bound by any award in this arbitration.

In addition, Levona was not prejudiced by the late reference to the Preferred Nominees. Eletson produced to Levona the limited documents reflecting this transfer in April, a few weeks before the evidentiary hearing, giving it plenty of time to review the evidence. The parties subsequently entered into the May 3 joint stipulation agreeing to the fundamental fairness of this hearing. "The parties stipulate that each has no challenge or objection to the arbitration on fairness grounds on the basis that it has not been granted enough time to prepare for or present its case." (Procedural Order No. 6, ¶ 8(g).)

Moreover, Eletson's explanation for why the transfer to the nominees was not raised earlier in the proceedings is credible. Karastamati testified that the families "considered [it] to be an intrafamily matter, so [they] thought and believed it was not relevant to this arbitration." (May 16, 2023 Transcript pp. 108:5-11.) It was only after the Levona-related entities including its affiliate Pach Shemen made clear in the Holdings bankruptcy that they would attempt to use the bankruptcy proceedings as an end-run around against any adverse award in this arbitration by claiming that the preferred shares were part of the bankruptcy estate of Holdings, that Eletson felt compelled to set the record straight and make it clear that Eletson Holdings was never intended to directly or indirectly, as owner of the common shares of the Company, own the preferred shares.

Paradoxically, given the strenuous objection made by Levona in its motion to strike, Levona never sought additional discovery nor requested depositions on the issue of the

nominees before or during the arbitration hearing. At the arbitration hearing, Levona did not conduct any meaningful cross-examination of the three Eletson witnesses who testified about the contingent transfer to the Preferred Nominees or present any contradicting evidence. Levona also did not raise any credible reason why this transfer, at the time of the closing or post-closing of the Transactions, would be prohibited under the Transaction Documents.

Given the full history of these proceedings, the pleadings, and the evidentiary record in these proceedings, including the credibility of the Eletson witnesses, I deny Levona's May 2023 Motion to Strike or Dismiss.

V. ANALYSIS AND DECISION OF THE MERITS OF THE PARTIES' CLAIMS AND COUNTERCLAIMS

A. Eletson Exercised the Option Pursuant to the Terms of the BOL

Pursuant to the BOL, Levona granted the Company and Eletson Corporation a purchase option, whereby Levona agreed to be bought out of its stake in the Company.

Section 2.1 of the BOL provides:

> Subject to and in consideration of the Transfer occurring and the conditions set out in Clause 2.2 and 2.3, Levona hereby grants to Eletson Gas the option exercisable by written notice to Levona by both of them (an "Option Notice"), for either Eletson Gas or its nominee to purchase all the membership interests held by Levona in Eletson Gas (the "Option Membership Interests") for a consideration equal to the Purchase Option Consideration payable in cash on completion of the transfer of the Membership Interests to such account as Levona may nominate in writing. (J-06 § 2.1.)

Section 2.2 provides that an Option Notice may only be served after either:

> (a) the Loan and any interest accrued thereon is fully repaid; or
>
> (b) adequate security and/or collateral is provided for the Loan (the adequacy of such security being at the sole discretion of Levona). (J-06 § 2.2.)

Pursuant to Section 2.3, Eletson Gas had to exercise the option by sending the Option Notice within thirty days from the date of the BOL, unless the period was extended pursuant to Sections 2.4 or 2.5. (J-06.)

"Purchase Option Consideration" is defined as "an amount equal to US$1 plus an amount equal to US$23,000,000 less the Net Value. If the Net Value is equal to US$23,000,000, the Purchase Option Consideration shall be US$1. If the Net Value exceeds US$23,000,000 the amount outstanding under the Loan shall be reduced by the amount of the difference." (J-06 § 3.2.)

Section 3.3 of the BOL specifies that "The Net Value shall be calculated as follows: . . . the Net Value shall be based on a third party independent valuation of the vessels owned by the Companies less the mutually agreed debts, costs, outgoings, expenses, trade debts and other liabilities of the Companies (including, if such vessels remain on finance lease, the purchase option price thereunder and the estimated fees and expenses of an eventual onward sale of the vessels) plus bunkers and lubs at the time of the transfer of the Companies to Levona." (J-06.)

Following the execution of the BOL, on March 11, 2022, the parties entered into a series of transactions and executed the Transaction Documents.

The language in the BOL is unambiguous, and neither party argues otherwise. "[A] written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms. *Motors Liquidation Co. DIP Lenders Tr. v. Allianz Ins. Co.*, No. N11C-12-022 PRW CCLD, 2017 Del. Super. LEXIS 279, at *16 (Super. Ct. June 8, 2017). Moreover, the BOL and Transaction Documents contain merger clauses. (*See e.g.,* J-06 ¶ 9.2.) It is well settled that "where a contract contains a merger clause, it will be enforced as written and cannot be added to, varied, or contradicted by

parol evidence." *Revolution Retail Sys., Ltd. Liab. Co. v. Sentinel Techs., Inc.*, No. 10605-VCP, 2015 Del. Ch. LEXIS 276, at *57 (Del. Ch. Oct. 30, 2015) (citation removed); *see also Matthius v. Platinum Estates, Inc.*, 2010 NY Slip Op 4965, ¶ 2, 74 A.D.3d 908, 909, 903 N.Y.S.2d 477, 479 (App. Div. 2nd Dept.) ("The purpose of a merger clause is to require full application of the parol evidence rule in order to bar the introduction of extrinsic evidence to alter, vary, or contradict the terms of a written agreement.")

It is undisputed that the Loan remains outstanding and has not been fully repaid pursuant to Section 2.2. Thus, Eletson could only have exercised the option to buyout Levona pursuant to the BOL if it paid Levona the Purchase Option Consideration and provided adequate security and/or collateral for the Loan. (J-06.) The record establishes that Eletson satisfied both of these conditions.

i. Purchase Option Consideration

The evidence establishes that Levona received the Purchase Option Consideration. Pursuant to the Share Transfer Agreement, on March 11, 2022, the Company paid the Purchase Option Consideration by transferring the shares of the Symi and Telendos. (J-08.) The total transfer had and still has a value in excess of the $23 million price set forth in the BOL. (C-1900 ¶¶ 48-89; C-1897 ¶¶ 24-31.)

The record does not support Levona's contention that the transfer of the shares of the Symi and Telendos was the consideration for the option to buyout Levona, rather than the Purchase Option Consideration exercising that option. Section 2.1 expressly provides that "consideration equal to the Purchase Option Consideration" would be paid "on completion of the transfer of the Membership Interests." Meaning, the $23,000,000 (plus $1) would be paid at the same time the preferred interests were transferred, not for receiving an option to purchase the preferred interests.

In addition, transferring the shares in the Symi and Telendos without transferring Levona's interests in the Company would lead to a breach of the LLCA. Section 6.2 of the LLCA prohibits Members (which would include Levona as the preferred interest holder), from acquiring or owning any vessels such as the Symi and Telendos.

Section 6.2 provides, in relevant part, that:

> 6.2 Restrictions on Activities of the Members. Eletson and the Special Member agree that, except for activities engaged in through the Group Companies, none of Eletson or any of its Affiliates (including the Special Member) will directly or indirectly acquire, own, operate, charter or engage in the management of any LPG, ethylene, petrochemical gases and ammonia sectors. Each of BX, Blackstone Family and BTO SMD agrees that it shall not have a direct interest in the ownership of any vessels employed in the transport of LPG, ethylene, petrochemical gases or ammonia . . . . (J-01 § 6.2.)

This is essentially a non-compete clause—a concept also reflected in the LLCA's definition of "Ineligible Person." (J-01 p. 9.) Indeed, Levona should have been aware of this restriction as Blackstone flagged this issue for WFW, Murchinson's, counsel in October 2021—ensuring that Murchinson did not compete with the Company, otherwise it would be ineligible to purchase Blackstone's interests. (CM-2003.) Thus, the only reasonable interpretation of the BOL is for the transfer of the shares of the Symi and Telendos to constitute consideration for the buyout of Levona. Any other reading would be inconsistent with the parties' obligations under the LLCA.

Here, the parties' correspondence leading up to, and in connection with, the drafting of the BOL confirms this interpretation and the shared intent of the parties. *See, E. I. Du Pont de Nemours & Co. v. Admiral Ins. Co.*, 1990 Del. Super. LEXIS 351, *17-18 (Del. Super. Ct. Sept. 19, 1990) (even where the parole evidence rule applies, it only applies to prior or contemporaneous evidence "offered for the purpose of varying or contradicting the terms of an integrated contract and does not exclude evidence offered for the purpose of

interpreting and giving a meaning to those terms."); *see also Fox v. Paine*, 2009 Del. Ch. LEXIS 10, *17-18 (Del. Ch. Jan. 22, 2009) (even for an unambiguous contract, a court may "consult extrinsic evidence secondarily to confirm the 'conclusion that the contract language is unambiguous, evidencing . . . the shared intent of the parties' at the time of they entered the contract. Situations exists where the court may 'consult undisputed background facts to place the contractual provision in its historical setting without violating' the principle that the court not consider extrinsic evidence when interpreting an unambiguous contract") (footnotes omitted), *aff'd*, 981 A.2d 1172 (Del. 2009).

Early negotiations in January 2022 demonstrate that Murchinson sought $23 million in return for its preferred interests to be paid either in cash or by transferring the title in the Symi and Telendos. (J-14, stating "Should the Closing not take place by 28 February 2022 (the 'Longstop Date'), the parties agree that the Company shall transfer title to two of its vessels to Murchinson Ltd. *as good and valuable consideration for the transfer of the Membership Interests* to the Company or, as the case may be, its nominated affiliate; the two vessels which shall be transferred should the Closing not take place by the Longstop Date are v. Symi and m.v. Tenendos [sic]" and "Immediately upon transfer of the Membership Interests, whether at the Closing simultaneously with payment of the Consideration *or in exchange for the transfer of title in the Vessels* . . . the Company's constitutional documents shall be amended so that all membership interests in the Company become common units….") (emphasis added).

While the scope of the buyout changed to include Levona's providing a loan to the Company, the negotiations concerning the ultimate consideration to be paid to Levona for its interests remained $23 million, not $23 million plus the value of the Symi and Telendos (which, not coincidentally, at the time of the negotiations of the BOL was valued at or

around $23 million). (*See, e.g.,* C-0107, email from Kertsikoff to Spears stating "as you are aware, we have been negotiating the sale of the Symi and Telendos for some time now and the latest price we have (as of yday [sic] is at (NAV equivalent) $22.7m.") For example, Spears confirmed the expected value for the transfer of Levona's interests on February 22, 2022: "our intention is not to try and get more than $23 million through this arrangement.") (C-1037.) Spears confirmed this at the hearing stating that Murchinson/Levona wanted "23 million . . . for the sale of the preferred [shares]." (May 22, 2023 Transcript pp. 198:22-199:10.)

In addition, the evidence demonstrates that the transfer of the Symi and Telendos was adequate consideration. Eletson's experts Peter Daniel and Nikolaos Veraros both calculated the Net Value of the Symi and Telendos, using independent valuations, as contemplated by the BOL. I find both of these calculations reasonable and credible. Mr. Daniel calculated the Net Value as $24.2 million. (May 18, 2023 Transcript 190:3-12.) Mr. Veraros calculated the Net Value as of March 11, 2022 as $24,858,651, less a 1 percent broker commission. (C-1903 ¶¶ 26-31; C-1903.0017.) Then, following the BOL, Mr. Veraros testified that he "adjusted for the rest of the assets and the liabilities of these two companies, as per the information from the company," and concluded that the Net Value was approximately $24.8 million (May 18, 2023 Transcript p. 276:14-23.) He further testified that he felt that a 1 percent broker commission would likely be standard for this transaction, and that approximately $665,000 should accordingly be deducted from his Net Value calculation. (May 18, 2023 Transcript pp. 276:18-278:12.)

Levona's expert, Kristoffer Slangsvold's valuation is not persuasive. Rather than rely on independent valuations, such as those by Arrow and Braemar, as Eletson's experts did, and as contemplated by the definition of Net Value in the BOL, Mr. Slangsvold

decided to conduct his own valuation of the Symi and Telendos. (J-47.) In addition, Mr. Slangsvold, prior to being retained as Levona's expert for the arbitration, had communications with Levona personnel about the potential sale of the Symi and Telendos. Notably, at the time of this outreach, the contemplated value for the two vessels was more than $23 million. Accordingly, Mr. Slangsvold testimony does not carry as much weight as the valuations of Mr. Daniel and Veraros. (May 24, 2023 Transcript p. 37:04-15.)

Moreover, as Dr. Furchtgott-Roth explained, the transfer of the Symi and Telendos without the reciprocal transfer of Levona's membership interests in the Company would be economically irrational, and that despite the references to the word "option" in the BOL, the BOL would more accurately be characterized as a "forward contract." (C-1902 ¶ 29.) He states:

> I have not seen any explanation why, according to Levona, Eletson would have transferred assets worth $23 million but then never bothered to exercise the option that would then have cost it $1.00. An economist would not lightly assume any such economic irrationality. Although the BOL describes parts of the contract as an "option" and other parts without reference to an option, I find, from an economic perspective, that the BOL would more accurately be characterized as a "forward contract," in that both parties to the BOL agree to a future transaction at a price agreed upon in the BOL. (C-1902 ¶ 29) (footnotes omitted).

ii. Adequate Security and/or Collateral

The evidence also proves that Eletson provided adequate collateral for the Loan, which thereby should have triggered the exit of Murchinson/Levona from the Company. Pursuant to the Assignment of Claims executed on March 11, 2022, Eletson and EMC Gas, subsidiary of Eletson Gas, assigned Levona claims against the Company and the vessel subsidiaries for management fees and liquidity support. (J-9.)

Eletson's expert, Dr. Furchtgott-Roth testified that there is a clear distinction between security and collateral: "To me, in the context of BOL, collateral would be -- could

be a broad class of assets where a security probably means something that there's a direct party involved. . . . A security would be an asset where there is a marketable -- marketable -- it's an asset such as a bond, something that you can go into some market and trade it for a -- . . . . What I'm saying is, in this case, security in my mind is -- is narrower. And collateral would include security, but could include things that might not qualify as a security" (May 19, 2023 Transcript pp. 194:15-195:13.) Levona did not provide any persuasive contradicting evidence. Accordingly, I find that the assignment of claims constituted "collateral" not "security under the BOL.

While the terms of the BOL provided Levona sole discretion to approve "security," it did not have sole discretion to approve collateral, and nothing in the BOL precludes the management fees or liquidity support claims from constituting collateral (J-06 ¶ 2.2(b) ("adequate security and/or collateral is provided for the Loan (the adequacy of such security being at the sole discretion of Levona.").) The evidence supports the conclusion that Eletson discussed the nature of the collateral it would provide and sent information to Levona relating to the value of these claims prior to the execution of the Assignment of Claims. (C-1004, providing that the management fees as of February 15, 2022 totaled $6,870,204, and the liquidity claims totaled $4,525,076; May 16, 2023 Transcript pp. 330:5-331:13; 336:2-339:8; 348:9-349:11.) Mr. Kertsikoff's testimony as to his conversations with Mr. Spears is credible. (May 16, 2023 Transcript pp. 330:5-331:13; 336:2-339:8; 348:9-349:11.)

Levona's contention that it required the Assignment of Claims not as collateral for the Loan, but as a separate protective measure to prevent Eletson Corporation from attempting to repay itself before repaying the Loan is unpersuasive. As of the date of the Assignment of Claims, the Company had already drawn down $5 million of the loan, on

February 23, 2022. Those funds had been paid to the Company's creditors, and Levona was fully aware of this. Thus, the Company had already received and spent a substantial portion of the loaned funds before any purported "protections" for the loan were put in place. (C-1964 ¶ 61.)

In addition, the assigned claims constituted adequate collateral under the BOL. Eletson provided extensive expert testimony concluding that the nominal and realizable value of the assigned claims, as of the time of assignment, exceeded $10 million. Eletson expert, Mr. Leptos-Bourgi of PricewaterhouseCoopers S.A., reviewed and analyzed the Company's financial data to confirm the nominal value of the assignment of claims, and found that the Management Fees were worth $5,729,362.86, and that the Liquidity Support Claims were worth $4,646,069.07. (C-1901 p. 8.) Experts Daniel and Verraros then analyzed the extent to which the nominal value of these claims was realizable by Levona as of the date of the assignment of claims, and both experts found that the realizable collective value of those claims exceeded $10 million (C-1900 ¶¶ 15-47); C-1897 ¶¶ 9-18).)

Levona's attempt to argue that the claims were valued at less than $10 million fails. First, Levona's expert, Danniel Baer did not conduct the realizable value of these claims, but rather, testified as to how, in his opinion, the claims should have been reported on the financial statements in accordance with GAAP. Mr. Baer did not consider, nor did he view it as relevant to his opinion, the legal ability of the holder of the assigned claims to enforce them (i.e., through the arrest of vessels or other rights such holders would have.) Despite this, he reached an opinion that the holder of the claims—regardless of who that may be—should take an impairment when reporting the value in their financial statements, and report the value of the assigned claims as zero. (May 23, 2023 Transcript pp. 108:22-116:7.)

I do not find Baer's testimony convincing in light of other testimony heard throughout the proceeding, including from Eletson's experts. (*See, e.g.,* C-1897 ¶¶ 15-23.) (*See, e.g.*, C-1917.0002 (testimony of Mr. Daniel stating: "I note that Mr Baer looks to financial accounting standards, and US GAAP in particular, as determinative of the value of the management fees. While the standards Mr. Baer employs may be authoritative tools for financial reporting purposes, they involve the exercise of judgement and are not authoritative bases to determine the value of assets such as the management fees for any purpose other than the preparation of financial statements.").)

Moreover, Levona did not provide any contradicting evidence—it did not produce any financial records reflecting how it valued the assignment of claims (or the Symi and Telendos) on its books as of, or post-March 2022. Murchinson has this information and as discussed, *supra*, did not produce any financial information despite Claimants' requests to do so.[3] (May 22, 2023 Transcript pp. 73:16-74:2.)

The documents and correspondence that have been provided undermine and disprove any notion that Levona did not attribute value to these claims or view the assignment as collateral and/or security. (*See* CM-1979 (email from Murchinson's WFW attorney emphasizing the significance of the management fees to any hostile takeover attempt); C-1951 (email from WFW to Murchinson dated February 20, 2022 suggesting as a condition that "ECorp assign[] all its claims against any group member to Levona as part of the security for any vent you pay in.").) On January 24, 2022, Spears emails Kertsikoff stating: "we allow you to replace some or all of the $4 million cash deposit with

[3] While I have sufficient basis to find that an adverse inference is warranted that Murchinson's records reflect that the value of the assigned claims is at least $10 million, and that the value of the Symi and Telendos is at least $23 million, the evidence presented to determine the adequacy of the consideration and collateral is sufficient without such an inference. (*See* JAMS Rule 29.)

consideration being the management fees that are accrued but unpaid from Eletson Gas (or the shipowning subsidiaries) to Eletson Corp . . . .” (J-15.) Most notably, on May 2022, after the BOL, Spears admits in an email that the assigned claims were worth $10,676,000. (C-1304.)[4]

As a result, the evidence supports the view that Levona knew these claims were worth more than $10 million and that these claims were provided as collateral.

iii. Option Notice

Levona contends that the option was never exercised, and the lack of an express written Option Notice confirms this. I agree with Levona that there does not seem to be a separate formal written notice provided to Levona by Eletson exercising the option. However, the evidence reflects that the parties acknowledged that Eletson was exercising the option.

The agenda for the March 10, 2022 Board Meeting—one day before the execution of the Transaction Documents—includes: “Update on Eletson’s intention to exercise the purchase option.” (J-04.) Ms. Karastamati testified that “for us, the intention means the actual fact because if it is one way [sic] before, it’s the intention, but one day after this is a fact so we believe, we strongly believe that we gave notice to Levona that we were

[4] Levona introduced evidence concerning a lawsuit filed in Greece by Eletson relating to the management claims on the vessels as proof that Eletson did not consider these claims collateral for the loan or assigned to Levona. Eletson offered evidence to the contrary establishing that: (1) the assigned claims included management claims on the Company’s vessels that accrued as of March 11, 2022; there were claims that had accrued after March 2022 that were still owned by Eletson; and (2) the purpose of that lawsuit was to obtain a TRO protecting the claims (both those assigned to Levona and those due to Eletson post-March 2022. Specifically, Eletson sought “to secure our claims” against the Greek Vessels by prohibiting the bareboat charterers “from taking any action which would directly or indirectly have the purpose of transferring or encumbering” the Greek Vessels, which could have impaired or eliminated the ability to collect those claims. (J-38; see also May 22, 2023 Transcript pp. 278:16-287:20.)

exercising the option and gave this notice on March 10 and March 11, we exercised the option. (May 16, 2023 Transcript p. 87:4-13.)

Levona relies on the purported minutes of this March 10th meeting as evidence that Eletson did not exercise the option. Specifically, Levona insists that the reference to "installment" in that document should be deemed to refer to the payment Eletson needed to pay pursuant to the BOL to extend the option period; in other words, proving that Eletson could not exercise the option on or about March 10th and needed an extension of time to do so. However, this document (J-33), and Mr. Lichtenstein's testimony surrounding it, is not credible. Eletson provided evidence about the metadata for this document that supports the inference that it was edited by Mr. Lichtenstein *after* this arbitration commenced. (C-2023.) In addition, the reference to "installment" more credibly relates to the offset to the Loan that would occur if the Net Value exceeded $23 million.[5]

As additional support for the conclusion that the parties acknowledge that Eletson exercised the option, in the Unanimous Written Consent, Ms. Karastamati and Mr. Kertsikoff were appointed and "authorized to sign, execute (under hand or under seal) and deliver the [sic] on behalf of the Company . . . any and all notices to be issued . . . in

[5] It is also worth noting that Mr. Lichtenstein's entire testimony lacked credibility. His witness statement (LEV255) consisted largely of hearsay and statements about events for which he had no personal knowledge, or opinions for which he had no expertise (i.e., rebuttals to expert reports). Prior to the hearing, Levona's counsel insisted Mr. Lichtenstein's presence at the entirety of the hearing was critical and it would be prejudiced if he was not able to attend the entirety of the hearing. Indeed, Levona insisted that Mr. Lichtenstein was a critical part of Levona's legal team, as he was purportedly Levona's General Counsel. Pursuant to my email order, dated May 12, 2023, and to protect against contamination of his witness testimony, I permitted Mr. Lichtenstein to attend the evidentiary hearing, "only after his affidavit of direct testimony is provided to Claimants." Despite its earlier claim of prejudice, Levona waited to call him as their last witness, and submitted his witness statement after almost every other witness (fact and expert) had testified. Yet, his witness statement somehow managed to address every, or almost every, contested issue in the hearing. For the above reasons, his entire statement was given little evidentiary weight and I viewed his live testimony incredible.

connection with the Binding Letter Agreement and be authorized to execute and deliver any notices, acknowledgments or otherwise, to be entered into and done in connection therewith and with the arrangements contemplated thereby." (J-11.) All directors, including the Levona directors signed this, but only the Eletson directors were given this authorization. The fact that only Eletson personnel were so authorized supports the conclusion that Levona was no longer to act as the preferred member. (J-11.)

In addition, Eletson's conduct following March 11 was consistent with the buyout. For example, after the transfer of the Symi and Telendos to Levona, Eletson assisted Levona with the sale of the two vessels to other third parties. Eletson also made efforts to cooperate with Levona's efforts to reflag the vessels from Greece to Liberia and novate the underlying bareboat charters to Levona's interests (C-1968 ¶¶ 9-10.)

Additionally, both parties acted in a manner consistent with the fact that Levona had been bought out of the Company. For example, Eletson continued to manage the day to day affairs of the Company, board meetings essentially stopped, business dealings between Eletson and Levona concerning the Company then revolved around Eletson's repayment of its loan obligations to Levona, plus extensive efforts by Eletson to assist Levona in on-selling the Symi and Telendos, and Eletson held itself out, as the family at large, as the sole shareholder of the Company and sole beneficial owners of the Company's remaining 12 vessels. (C-1964 ¶ 71.)[6]

[6] Levona spent considerable energy and time focused on a July 13, 2022 email from Mr. Kanelos with attachment entitled "Murchinson Buyout Steps" (J-29) and subsequent email from Ms. Karastamati on July 19, 2022. (LEV218.) In Levona's view, the July 13th email is the "smoking gun" of the arbitration and makes clear that the option was not exercised. Levona also insists that additional emails surrounding this document that Eletson withheld as privileged demonstrate that the memo was sent on the advice of counsel and was not privileged. I already denied Levona's motion to compel after reviewing those emails *in camera*. The emails were privileged and do not support Levona's position. As for the substance of the July 13th document, I do not view this as the "smoking" gun Levona does. First, it was drafted by Mr. Kanelos who was being bribed by

Vassilis Kertsikoff repeatedly represented to potential investors that Levona was out of the Company. (C-399 ("Eletson Gas is seeking $30m from a financial/strategic partner to refinance working capital facility provided by its *previous* shareholders and to refinance part of its fleet."); J-26; C-579; C-580; C-581 (emphasis added).)

At best, the absence of a written notice and payment of $1 dollar are formalities that the parties failed to observe.

Levona argues that the fact that the stock registry was updated when Levona purchased Blackstone's interests but has not been updated to reflect Levona's exit is also reflective of the failure to exercise the option. I disagree. The express language of the BOL explains the absence of any update to the stock registry.

Section 3.4 of the BOL provides in pertinent part: "The parties agree to work in good faith to determine and agree the Net Value promptly and no later than 5 days after service of the Option Notice. In the event of any failure to agree the Net Value within the aforementioned period: (a) the Option Notice shall remain valid but the transfer of the Option Membership interests shall be suspended pending agreement or determination of the Net Value" (J-06 at § 3.4.) It is undisputed that the parties have not agreed on the Net Value. Thus, the formal transfer of the interests has been suspended. Levona, however, ceased being the beneficial owner of the preferred since March 11, 2022, and no longer had the right to vote those preferred shares. *Len v. Fuller,* 1997 Del. Ch. LEXIS 78, at*7, 10 (Del. Ch. May 30, 1997 (even where "there has been no determination of a price to be

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Murchinson and had every incentive to muddy the waters. Second, as confirmed by the testimony of Eletson's witnesses, the Kanelos email created fury and confusion. (May 16, 2023 Transcript pp. 264:13-265:9; 265:24-266:17; C-1963 ¶¶ 77-78.) Ms. Karastamati's follow-up email can be viewed as an attempt to "move forward" with the original transaction after Levona refused to follow-through with the exercise of the BOL. (C-1963 ¶ 81.) I find that at most, this memo is an inaccurate checklist of items needed to complete Levona's exit from the Company pursuant to the terms of the BOL.

paid for [record-owner's] shares pursuant to a procedure set forth in the Shareholders Agreement, no cancellation of the certificates, and no change on the company's stock ledger," a court of equity "may enforce equitable rights in the stock (including an equitable right to control the exercise of the vote attached to the stock)"; finding beneficial owner controlled vote).

Levona argues that the BOL expressly references the word "option" 34 times. (*See, e.g.,* May 23, 2023 Transcript pp. 183-21-184:3 (Mr. De Quillacq testifying "I think it's important to see whether that contract is an option or forward. If you see the word option 36 times, it's likely to be an option.")) This is simply an example of elevating form over substance. The substance of the BOL is more consistent with a forward contract, as explained by Dr. Furchtgott-Roth. (C-1902 ¶ 29.)

In addition to all the reasons already stated, and as Dr. Furchtgott-Roth testified, it would be economically irrational to find that Eletson never bothered to exercise the option that would have cost it $1 when the consequence of not doing so would be: Levona obtaining two liquified petroleum gas vessels valued at more than $23 million, more than $10 million in assigned claims, and a Fundamental Action Letter that gives Levona more rights to control the actions of the Company than those spelled out in the LLCA while Levona still retains the Company's preferred interests. (C-1902 ¶ 29.)

Accordingly, after weighing the evidence, I find that it is more likely than not that the conditions for the buyout were met. As such, pursuant to the BOL, Levona's interests should have been transferred to Eletson Gas, or its nominee. As discussed, *supra*, Eletson has proven that Eletson Gas transferred these interests to the Preferred Nominees. Thus, as of March 11, 2022, Levona was no longer the preferred holder and ceased having any ownership in the Company.

Accordingly, it follows that Levona did not have the authority to enter into the Unigas LOI, direct the operations of the Company, or otherwise assert control over the assets of the Company.

B. Eletson's Pre-BOL Claims

Eletson asserts claims for breach of the LLCA and breach of the covenant of good faith and fair dealing.

Under Delaware law, the elements of a breach of contract claim are: "1) a contractual obligation; 2) a breach of that obligation by the defendant; and 3) a resulting damage to the plaintiff." *H-M Wexford LLC v. Encorp, Inc.*, 832 A.2d 129, 140 (Del. Ch. 2003).

Under Delaware law, an implied covenant of good faith and fair dealing inheres in every contract. "The implied covenant is a 'judicial convention designed to protect the spirit of the agreement when, without violating an express term of the agreement, one side uses oppressive or underhanded tactics to deny the other side the fruits of the parties' bargain.'" *Bakerman v. Sidney Frank Importing Co.*, 2006 Del. Ch. LEXIS 180, at *71-72 (Del. Ch. Oct. 10, 2006) (*quoting Chamison v. Healthtrust, Inc.*, 735 A.2d 912, 920 (Del. Ch. 1999)). "Courts will find a breach of an implied covenant when it is 'clear from what was expressly agreed upon that the parties who negotiated the express terms of the contract would have agreed to proscribe the act later complained of as a breach of the implied covenant of good faith had they thought to negotiate with respect to that matter.'" *Bakerman*, 2006 Del. Ch. LEXIS, at *72.

The terms "good faith" and "fair dealing" in the context of an implied covenant have a different meaning from the fiduciary duty concept of good faith and the duties of loyalty and care. *Gerber v. Enter. Prods. Holdings*, 67 A.3d 400, 418 (Del. 2013),

overruled on other grounds by Winshall v. Viacom Int'l, Inc., 76 A.3d 808 (Del. 2013). The implied covenant imposes a duty "to deal 'fairly' in the sense of consistently with the terms of the parties' agreement and its purpose." *Id.* at 419 (internal quotation marks omitted). And "'good faith' [means] faithfulness to the scope, purpose, and terms of the parties' contract." *Id.* (italics omitted). "Both necessarily turn on the contract itself and what the parties would have agreed upon had the issue arisen when they were bargaining originally." *Id.* (internal quotation marks and italics omitted).

Here, the members of the Company waived fiduciary duties. Under Delaware Law the fiduciary duties of a member, manager, or other person that is a party to or bound by a limited liability company agreement may be expanded or restricted or eliminated by provisions in the LLC agreement. *Smith v. Scott*, 2021 Del. Ch. LEXIS 76, 2021 WL 1592463 at *23 (Del. Ch. Apr. 23, 2021). If the LLC's operating agreement plainly disclaims, restricts or limits the duties of its managers and members, the parties must look to the agreement's provisions for their rights and remedies. *Id.* at *24. Where traditional fiduciary duties "have been clearly supplanted or modified, those contractual choices will be respected." *Ross Holding & Mgmt. Co. v. Advance Realty Group, LLC*, 2014 Del. Ch. LEXIS 173, 2014 WL 4374261 at *41 (Del. Ch. Jan. 24, 2014).

An LLC agreement, however, "may not eliminate the implied contractual covenant of good faith and fair dealing." *Miller v. HCP & Co.*, 2018 WL 656378 at *22 (Del.Ch. Feb. 1, 2018) (*quoting* 6 Del. C. § 18-1101(b). However, the "implied covenant applies only if the contract is silent as to the subject issue." *Miller*, 2018 WL 656378 at *23. Because a claim for breach of the implied covenant is contractual, "the elements of an implied covenant claim are those of a breach of contract claim: 'a specific implied contractual obligation, a breach of that obligation by the defendant, and resulting damage

to the plaintiff.'" *Miller*, 2018 WL 656378 at *22 (citation omitted). The implied covenant applies only when one party "proves that the other party has acted arbitrarily or unreasonably, thereby frustrating the fruits of the bargain that the asserting party reasonably expected." *Miller*, 2018 WL 65378 at *22 (*quoting Nemec v. Shrader,* 991 A.2d 1120, 1126 (Del. 2010)). The implied covenant does not "'establish a free-floating requirement that a party act in some morally commendable sense.' Instead, 'good faith' in the implied covenant context entails 'faithfulness to the scope, purpose, and terms of the parties' contract.'" *Miller*, 2018 WL 65378 *23 (citations omitted).

i. Pre-Acquisition Conduct

Prior to November 2, 2021, the Levona-related entities were not parties to the LLCA and therefore, could not have breached its terms or the covenant of good faith and fair dealing. To the extent Eletson seeks relief under any theory of liability for pre-November 2, 2021 actions, I do not have jurisdiction and deny such relief.

ii. Levona's acquisition of the Blackstone's interests

While the record provides sufficient evidence to conclude that Murchinson engaged in underhanded tactics and dishonest dealings in connection with its acquisition of the Blackstone's interest, I deny Eletson's claim seeking to void Levona's acquisition of Blackstone's interests *ab initio*. Eletson has not met its burden in establishing how, even assuming Murchinson engaged in the nefarious actions Eletson alleges, that gives Eletson the right to void the transfer of Blackstone's shares. Nor is the consequence of that clear—voiding that transfer would also void the BOL and the Transactions. Acknowledging this, Eletson seeks (1) rescissory damages relating to Levona's bad faith acquisition of its shares; (2) rescissory damages relating to the transfer of the Symi and Telendos to Levona, including that the proceeds of any sale of the Symi and Telendos and revenue related

thereto paid to Claimants/the Company. *See Creative Research Mfg. v. Advanced Bio-Delivery LLC*, No. 1211-N, 2007 Del. Ch. LEXIS 15, at *33 (Del. Ch. Jan. 30, 2007) (awarding rescissory damages). *Tam v. Spitzer*, 1995 Del. Ch. LEXIS 116, *27 (Del. Ch. Aug. 17, 1995) ("Where, as here, a party is fraudulently induced to enter into a contract, the defrauded party may elect either to affirm the contract and sue at law for money damages, or disaffirm the contract and seek rescission in equity.")

However, the sale of shares from Blackstone to Levona is not Eletson's contract to affirm or disaffirm—it is Blackstone's. Moreover, such a ruling would be incompatible with the basis for this arbitration's jurisdiction, as it would mean that Levona never had ownership in the Company, and therefore, was never bound by the LLCA. Finally, as I determined, *supra*, I am finding that Eletson exercised the BOL. Pursuant to the BOL, the shares of the Symi and Telendos were properly transferred to Levona. Also as discussed, *infra*, I am awarding Eletson damages for the amount Levona has been unjustly enriched by virtue of its holding the shares of the Symi and Telendos without simultaneously transferring the preferred interests to the Company or its nominee. To award rescissory damages tied to the Symi and Telendos under a theory of rescissory damages would be duplicative.

iii. Post-Acquisition/Pre-BOL Claims

Turning to the Post-Acquisition/Pre-BOL claims, the evidence presented at the hearing demonstrates that Murchinson bribed an Eletson officer and Company representative, breached the terms of its NDA with Blackstone, and disclosed Company confidential information. These actions, never disclosed to Eletson *after* Levona became a party to the LLCA, breached both the LLCA and/or the covenant of good faith and fair dealing.

a. Bribing of Kanelos

As discussed, *supra,* the evidence establishes that Murchinson bribed Kanelos to act against the Company's interest. The clandestine relationship commenced prior to November 2, 2021, but continued after Levona/Murchinson became the preferred holder. Indeed, the illicit so-called "Services Agreement" was executed between Levona/Murchinson and Kanelos in December 2021 pursuant to which Murchinson wired $100,000 to Kanelos. (C-1699; C-1700; C-1701.)

Kanelos was clearly an officer of Eletson Corporation, and, according to Levona, of Eletson Gas. The LLCA provides that "Each Officer shall have the fiduciary duties to the Group Companies as those of an officer to a corporation organized under the laws of Delaware"). (J-0 § 6.1(d).) Pursuant to Schedule VII (m) (Fundamental Actions) Levona could not "enter into, amend or waive any term in an agreement between the Company and any Officer or member of senior management." (J-01 Schedule VII(m).) The so called Services Agreement induced a breach of those fiduciary duties and constituted a breach of the covenant of good faith and fair dealing.

b. Violating confidentiality obligations and interfering with Company's contracts with its banks and financiers

The evidence also establishes that Murchinson breached its NDA with Blackstone by communicating directly with the Company's financiers and lenders.

The Blackstone NDA provided, in relevant part:

> 5. All inquiries and other communications are to be made directly to Blackstone or employees or representatives of Eletson specified by Blackstone. Accordingly, Receiving Party and its Representatives agree not to directly or indirectly contact or communicate with any of Eletson's employees, lenders, lessors, customers, suppliers, or any other person with whom Eletson has a business relationship, or to seek any information in connection therewith from such person, without the express written consent of Blackstone.
>
> …

> 13. Neither this paragraph nor any other provision in this letter agreement can be waived, amended or assigned except with the written consent of each party hereto, which consent shall specifically refer to this paragraph (or such other provision) and explicitly make such waiver or amendment.
>
> (C-1655, J-36.)

There is no evidence that Murchinson ever received written consent from Blackstone to reach out to anyone, especially the Company's financiers.

In addition, the LLCA contains several clauses governing and restricting the use of the Company's sensitive and confidential information. Under Section 12.3(a)-(b), a member may disclose the Company's confidential information "solely for the purposes of such Member monitoring and analyzing his investment in the Company or performing his duties as a Member, Director, Officer, employee, consultant or other service provider of the Company." (J-01 § 12.3(a).) Each Member must "take all appropriate steps to safeguard such [Proprietary Information] and to protect it against disclosure, misuse, espionage, loss and theft." (J-01 § 12.3(a).) Section 12.3(b) expressly provides that each Member will be responsible for a breach of Section 12.3 by its Representatives (J-01 § 12.3(b).)

In addition, Under Section 10.2(e)(ii), the Preferred Unit Exit provision, the Company and the Board are to be kept apprised of any attempts by the Preferred Member to disclose confidential information for purposes of selling the preferred units.

Section 10.2(e)(ii) provides:

> Notwithstanding anything to the contrary set forth in this Agreement, during the Class B-2 Period prior to the consummation a Qualifying IPO, the restrictions on the Transfer of Units set forth in this Agreement shall not apply to the Preferred Members or the Preferred Units held by the Preferred Members, and such Preferred Members may Transfer to any Person that is not an Ineligible Person any Preferred Units; provided, however, that any transferee pursuant to this Section 10.2(e) shall be treated as a Permitted Transferee for purposes of Section 3.3(b). **The Company and the Board will use commercially reasonable efforts to provide support to the**

> **Preferred Members in connection with the marketing and Transfer to transferees and potential transferees, including, without limitation, and subject to appropriate non-disclosure agreements, providing financial information, causing members of the Board and members of the Group Companies' management teams to be available (at reasonable times upon reasonable requests) to potential transferees and coordinating inspections of the Vessels.** The restrictions, covenants and agreements of this Section 10.2(e) shall terminate upon the completion of a Qualifying IPO.
>
> (J-01 § 10.2(e)(ii) (emphasis added).)

It is undisputed that the Company and Eletson directors were not kept apprised of Murchinson's disclosure of confidential information in connection with its purchase of the preferred shares.

The evidence reflects that contrary to the NDA's express terms, Murchinson communicated directly with the Company's financiers and lenders and provided confidential Company information. For example, on February 12, 2021, Kanelos, on behalf of Murchinson, sent Libera a proposal to restructure Libera's loan facility. (C-463.) On May 10, 2021, an agent of Murchinson from Seafin sent a third-party financier a datapack for "Project Sage" containing Company information stating "the [Eletson] family is not aware about this transaction . . . we need to reiterate that this transaction needs to be dealt under a strict private and confidential basis." (C-453.) Kanelos responded by disclosing the Company's financial statements and other confidential information. (C-453.) Indeed, the record is replete with examples of Murchinson's outreach to, and strategies regarding, Eletson's financiers and competitors, either by Bistricer directly or through Murchinson's agents, Kanelos and others. (*See, e.g.*, C-1621; C-1627; C-1628; C-1645; C-1651; C-1660; C-1661; C-1657; C-1667; C-1668; C-1672; C-1596; C-441; C-442; C-470.) Notably, Murchinson/Levona continued to disclose confidential information in breach of the LLCA,

without Eletson's and the Company's knowledge, and without NDAs, after Levona purported to join the Company. (C-998.)

The evidence also supports the finding that Levona breached the covenant of good faith and fair dealing by causing the Company's lenders to arrest five vessels and failing to disclose this conduct after it became a member of the Company. The documents presented at the hearing reflect that at some point in time, Murchinson, with its counsel, WFW, developed an aggressive strategy to take control over the company that included putting pressure on the Company's lenders, getting vessels arrested, firing and replacing the management companies for the vessels, and selling the fleet. (CM-1999 ("Plan B" inviting "a consensual foreclosure of the SEB LEG Vessels," and "Libera to take their ships away also…with as much cooperation as [Murchinson could] offer," as well as "allow[ing SEB] to do what they keep threatening").)

On October 24 and 25, 2021, SEB arrested two of the Company's vessels (Dilos and Kithnos). (C-498; C-499.) Eletson received "[n]o advance warning" "notice or indication that an arrest was coming." (C-498.) Then, after Levona's acquisition of Blackstone's interests in the Company, SEB proceeded to issue warrants of arrest for two more vessels, the Othoni and Paros, on November 11, 2021 and November 12, 2021, respectively. (C-1964 ¶ 132.) Libera proceeded to issue a warrant of arrest for the Kithira on February 1, 2022. (C-1964 ¶ 132.)

As Kertsikoff attested, based on his long experience in the shipping industry and his relationships with the Company's financiers, he believes these arrests were the direct result of Levona's misconduct. (C-1964 ¶¶ 133-142.) These arrests were extreme and unusual actions within the shipping industry, particularly as Eletson had a normal banking relationship with its lenders for years and was faithfully paying its debts prior to its

financial difficulties. (May 16, 2023 Transcript pp. 319:13-320:11; 323:3-326:14.) At no time before the end of 2021 had SEB taken any action in terms of arresting the Company's vessels. (May 16, 2023 Transcript pp. 319:23-320:2.) Moreover, as Mr. Hadjieleftheriadis testified: "we had given the syndicate, the banks, clear indications that first we would start paying down the debt interest and principal, but more importantly, though, we were prepared to refinance the facility. We had told them that we had a financier -- we had been in contact with a certain financier who would quickly finance the investments." (May 18, 2023 Transcript pp 112:9-17.)

As further evidence of Murchinson's corrupt intentions, on July 2021, Murchinson approached Eletson's broker, Thor Erik Lie from Grieg Shipbrokers, for information related to the Company's vessel values under the prospect of a "forced sale." (C-1659.) A "forced sale" is the "worst possible" valuation level. (May 18, 2023 Transcript pp. 111:10-21.) As Kertsikoff testified: "The fact that Levona, through Murchinson, was asking one of the Company's key brokers to provide forced sale values shows its mal-intent. Never in my experience have we sought out a forced sale valuation. A forced sale means that the vessels will be auctioned off and sold at a below market price in order to liquidate the assets on an expedited basis. There is no reason that Murchinson should have been asking *our broker* to provide it with those values except to account for forced sales in anticipation of the arrests." (C-1964 ¶ 128.)

Murchinson/Levona insists that the record does not support the finding that they wanted to have the lenders arrest the vessels or that their actions caused the arrests of the vessels. (*See, e.g.,* CM-1992; C-465.)

I disagree. First, I find the Eletson witnesses' testimony, combined with the record of communications between Murchinson and WFW reflecting Murchinson's intended

strategy, and between Murchinson and the banks and financiers, sufficient evidence to prove that Murchsinon's aggressive tactics more likely than not, contributed to the arrests of the ships, and that had Murchinson not interfered with the Company's relationships with its banks, the arrests would not have occurred. The emails Levona cites in its defense occurred before Murchinson turned to its "Plan B." (*Compare* CM-1992 and C-465 *with* CM-1999.)

Second, the record is incomplete, and we do not know what a full record would reflect. Murchinson took the position throughout the entirety of these proceedings that it is not a party to this arbitration. But as the evidence conclusively establishes, and as discussed, *supra*, Murchinson is the real party in interest in this arbitration. Despite this, Murchinson did not make a full production of documents and communications. It is only as a result of my orders directing Levona/Murchinson to produce its communications with Kanelos and WFW that we know about Murchinson's coordinated strategy (i.e., "Plan B") and the communications with the lenders. (CM-1999.)

For the avoidance of doubt, I do not believe that Levona's counsel in this arbitration was an active participant in its client's gamesmanship, but rather another pawn in its perpetual deceit.

Accordingly, I find that Murchinson's improper dealings with the Company's banks and financiers pre-acquisition of Blackstone's interests caused the arrests of the vessels and that its failure to disclose these actions to Eletson once it became a member in the Company was a breach of the covenant of good faith and fair dealing.

c. Breaching the LLCA by attempting to terminate management contracts

Levona also breached the LLCA immediately upon joining the Company by attempting to terminate management contracts and replace the directors of the Company's subsidiaries. (C-818; C-837; C-838; C-1964 ¶¶ 20, 115-121.)

Section 3.2 of the LLCA, provides as follows:

> 3.2 Fundamental Actions. Except for actions authorized to be taken by the Preferred Members pursuant to Section 3.6(c), the prior approval of at least four Directors (including at least one Eletson Director and at least one BX Director) shall be required in order for the Company to undertake, or permit or cause any Group Company to undertake, . . . (ii) during the Class B-2 Period, any of the actions set forth on Schedule VII (each a "Fundamental Action") (J-02 § 3.2.)

The parties agree that the carveout for Section 3.6(c) does not apply.

The Fundamental Action provision prohibits the Company from acting without an Eletson Director with respect to Schedule VII actions, a right made clear in the Amendment to the LLCA. (J-02 § 3.2.) Schedule VII enumerates 16 categories of actions that Levona cannot take without Eletson's approval (J-01, Schedule VII).

Those categories include the following:

> (b) other than the execution and delivery of the Management Agreements by the Shipcos and the Manager on the Initial Closing Date, enter into, or extend, amend, modify, renew or terminate any agreement or transaction, or waive performance under any such agreement, between a Group Company, on the one hand, and any member of the Group Company's management team, any Member, such Member's Affiliates or any other related party, on the other hand;
> . . .
> (h) approve the amendment, modification, termination, waiver or repeal of any provision of any Transaction Document (other than this Agreement), or provide any approval, consent to be provided to any Person on behalf of the Company or its Subsidiaries under the Transaction Documents (other than this Agreement), including without limitation, exercising any right of the Company or a Subsidiary to remove a manager under a Management Agreement;
> . . .

> (j) amend or modify any provision of any charter, articles, organizational or other governing document of the Company's Subsidiaries that would have the effect of (i) creating any additional requirement of Eletson to make Capital Contributions to the Company, (ii) modifying any voting threshold or approval right held by Eletson, (iii) materially and adversely change the express rights of Eletson set forth therein, other than as a result of dilution due to the issuance of additional Equity Interests;
>
> (k) other than in accordance with the terms of the Management Agreements, enter into any technical or commercial management agreement, any crewing arrangement or any other material vessel or maritime asset related agreement or any amendment thereto;
>
> . . .
>
> (p) enter into any agreement or commitment to effectuate any of the foregoing.
>
> (J-01, Schedule VII.)

In the context of Schedule VII (h), "Transaction Documents" does not refer to the BOL, but rather, the LLCA defines the terms as "this Agreement, the Contribution Agreement, the Management Agreements and the Financial Services Agreements (as defined in the Contribution Agreement)." (J-01.)

The provisions in Schedule VII prohibited Levona from taking unilateral action concerning Eletson's Management Agreements, including without limitation, terminating them directly or indirectly. Murchinson's counsel specifically advised it of this. (CM-2002.) Nevertheless, on November 5, 2021, Levona, through Bistricer, authorized WFW to terminate the Company's management agreements with Eletson Corporation and replace the board of directors of the Company's subsidiaries with Levona representatives. WFW, on Levona's behalf, issued a Notice of Replacement and Appointment of Directors purporting to replace Eletson's Directors and to appoint Lichtenstein, Spears, Fenttiman, and Hassett as the directors of the Company's subsidiaries. (C-837.)

Levona also issued a notice terminating the Company's affiliates' Management Agreements with Eletson Corporation. (C-838.)

Levona then attempted to use these termination notices to cut Eletson Corporation off from any communication with SEB: Lichtenstein sent SEB a notice of the termination. (C-839; C-840; C-1958.) Levona never informed SEB that the termination notice was in violation of the LLCA—despite being advised as such by WFW—but rather stated: "[P]lease be advised that Eletson Corporation have today been served with a notice of termination in relation to the management of the Vessels and the authority they may have had to deal with you regarding the Facility Agreement or the Vessels has been revoked. As such, Eletson Corporation has no right to correspond or otherwise deal directly with you in relation to the Facility Agreement or any Vessel." (C-839; C-818 (WFW advises Murchinson that "[s]ervice of the Management Agreement termination notice without consent from an Eletson Corp Director will breach the [LLCA] which could possibly render the termination notice invalid".))

Thus, the record overwhelmingly demonstrates that Levona's attempted termination of the management agreements was a willful and intentional breach of the LLCA.

C. Eletson's Status Quo Injunction Claims

Eletson asserts numerous allegations against the Levona-related entities for violations of the Status Quo Injunction. Some of those alleged claims, even if true and while harassing and menacing, did not cause quantifiable harm to the Company. For example, Levona's premature notice of default and acceleration of the Loan sent on October 25, 2022, and Levona's calling of board meetings. (C-404; C-405; C-086.)

As such, I will only specifically discuss those claims for which the violations caused quantifiable harm. The three actions are all related: Pach Shemen's purchase of a controlling interest in outstanding bonds issued by Holdings, Pach Shemen's directing of the trustee to commence litigation against Holdings, and Pach Shemen's directing of the commencement of the involuntary bankruptcy petition against Holdings.

On or about January 4, 2023, Pach Shemen purchased $183,851,546 in bonds of Holdings for $2 million. (C-746; May 22, 2023 Transcript p. 332:16-20.) Additionally, Mr. Spears, on behalf of the Levona-related entities, offered additional consideration to the bondholders contingent on the outcome of this arbitration stating that it would pay an additional "$500k if the arbitration ends to our satisfaction on Eletson Gas and we can exercise our rights to act as Preferred to sell Eletson Gas vessels and/or the company." (C-746.0008.) The Holdings bonds were purchased by Pach Shemen from Nomis Bay and BPY via private trades and then transferred to Pach Shemen. (C-746.) Mr. Spears testified that he had bought the bonds from four funds which had previously owned them, named Beachpoint, Caspian, Redwood, and Knighthead. (May 23, 2023 Transcript pp. Tr. 326:20-327:2.)

On January 11, 2023, Pach Shemen then instructed the bond trustee, Wilmington Savings Fund Society, to sue Holdings to collect the debt due on these bonds ("Bondholder Litigation").[7] Then on March 7, 2023, Pach Shemen and two other creditors of Holdings, filed involuntary bankruptcy petitions against Holdings in the Southern District of New York. The involuntary bankruptcy petition and some of the documents included in the filing were signed by Mr. Lichtenstein and Mr. Spears. (C-749; C-751; C-746.) The timing of this

[7] Eletson argues that Pach Shemen's purchase of these bonds and directing the trustee to commence litigation violated a standstill agreement Eletson had in place with the original holders of the bonds. This claim, while likely true, is outside my jurisdiction.

filing is notable—it was three days after I orally issued certain discovery rulings adverse to Levona, including that it had waived any claim of attorney-client privilege with WFW, and ordering the production of Levona/Murchinson's communications with Kanelos.

Levona argues that none of the actions taken by Pach Shemen are violations of the Status Quo Injunction because Pach Shemen is not bound by those orders, and with respect to the trustee litigation and the bankruptcy, Pach Shemen is not the only creditor directing those litigations.

As discussed, *supra*, Pach Shemen is the alter ego of Levona. The separateness is in name only. Its representatives, including Spears and Lichtenstein, were bound by the Status Quo Injunction. Despite this, Pach Shemen a/k/a Levona II, (C-746.0008), entered into a trade to purchase the notes, offering as consideration value associated with the assets in dispute in this arbitration. The TRO and November 2022 clarification expressly ordered the parties to "maintain the status quo" and prohibited the "transfer or sale of, or attempt to sell or otherwise transfer, any assets of . . . Gas . . .," and the Status Quo Injunction entered in January 2023, further extended the prohibition to include "or assets in dispute in this arbitration." (C-1816; C-1887; C-1838.) While technically Pach Shemen was not transferring the assets of Gas or assets in dispute in this arbitration, the overall strategy was intended to disrupt the status quo and find another path to obtain the "assets of Gas . . . or assets in dispute in this arbitration."

In other words, the Levona-related entities were looking to either strip this arbitration of its jurisdiction or hedge against a potential loss in this arbitration. They believed, at the time—although mistakenly—that if I ruled that Eletson had exercised the option and bought out Levona's interests, the preferred interests would pass to Holdings. Thus, by purchasing the bonds, it became a controlling creditor of Holdings with the ability

to put Holdings into bankruptcy. In the first instance, the filing of the bankruptcy led to Levona's insistence that it could not arbitrate these claims due to the automatic bankruptcy stay. This was certainly not "maintain[ing] the status quo." In the event the stay were to be lifted, and Levona lost in this arbitration, the Levona-related entities were then positioned to argue that, as creditor to Holdings, the value of the preferred shares passed to them.

Unfortunately for Levona, the strategy was misguided because the BOL expressly provided that in the event of a successful exercise of the option, the interests would transfer to "Eletson Gas or its nominee," (J-06 § 2.1), and as discussed, *supra*, Eletson Gas had transferred the interests to the Preferred Nominees. Although the actions of Pach Shemen may have been for naught, their actions were intentional and direct violations of the Status Quo Injunction.

D. Levona's Counterclaims

In light of my finding that Eletson exercised the option to buyout Levona's membership interests as of March 11, 2022, Levona's abovementioned counterclaims fail and are dismissed. I find, however, that as part of the consideration paid in connection with the BOL, the shares of the subsidiaries which control the Symi and Telendos were transferred to Levona and Levona retains all rights associated with the ownership of the subsidiaries of those vessels since that time.

VI. DAMAGES

A. Compensatory Damages

Eletson's expert Dr. Furchtgott-Roth presented credible and convincing evidence as to the damages suffered as a result of the Levona-related entities' misconduct. Levona did not provide counter-calculations. Dr. Furchtgott-Roth authored three expert reports in

this proceeding (C-1902, C-1918, and C-1934), and credibly testified in person at the hearing, where I determined he was qualified as an expert in economic analysis, options analysis, antitrust and competition, and damages. (May 19, 2023 Transcript pp. 108:22-109:3; see also C-1982 (hearing demonstrative).) He is a former Commissioner of the Federal Communications Commission and received a PhD in economics from Stanford University and an SB in economics from the Massachusetts Institute of Technology.

To calculate damages, Dr. Furchtgott-Roth reviewed extensive document discovery and company data listed in Exhibit B of his first report (C-1902.0105) and supplemented in subsequent reports. He explained that his "method for assessing economic damages begins with an assumption of Levona's liability as presented by Eletson," after which he would: (i) calculate, where possible, the compensation necessary to restore the injured party, Eletson, to the economic position they would have enjoyed but for the wrongdoing of the other party, Levona; and (ii) where harms to Eletson are not reasonably amenable to quantification," he offered a description of Eletson's injuries. (C-1902.0108.)

Due to the character of several of these harms, Dr. Furchtgott-Roth was not readily able to ascertain a specific quantum of damages for several kinds of actionable misconduct. (C-1902.0109.) As a result, he opined that his overall quantifications of damages are "necessarily a lower bound" of the full extent of harm Levona caused. (C-1902.0109.) However, he was able to quantify several categories of damages.

i. Damages Arising From Levona's Acquisition of the Symi and Telendos Without Reciprocal Transfer of the Preferred Interests

Dr. Furchtgott-Roth calculated $19,677,743.71 in directly calculable losses for the lost services of the Symi and Telendos. Dr. Furchtgott-Roth testified at the hearing that this figure is an estimate of what the Company would have made from those two vessels had it not transferred them, which he claimed was an appropriate measure of unjust enrichment

because the vessels were transferred without the reciprocal transfer of the preferred interests. (May 19, 2023 Transcript pp. 143:23-145:8; see also C-1902, Ex. C.7.) The damages should be paid to the Preferred Nominees, as they flow directly from Levona's refusal to relinquish the preferred interests, and the Preferred Nominees hold all title and interest in the preferred interests. *See, e.g.*, *Urdan v. WR Capital Partners, Ltd. Liab. Co.*, 2019 Del. Ch. LEXIS 313, at *32 (Del. Ch. Aug. 19, 2019) ("when the shares are sold, the rights to assert and benefit from direct claims pass with the shares to the new owner").

ii. Damages Arising from the Levona-Related Entities' Other Misconduct

Dr. Furchtgott-Roth calculated the directly calculable losses arising from Levona's conduct that led to the vessel arrests as $21,777,378.50. This includes: (a) approximately $17 million in lost time charter equivalent (TCE) revenues by comparing the projected time charter revenues for each arrested vessel against the actual revenues (i.e., zero), for time that each vessel was arrested; and (b) approximately $4.7 million in fixed costs incurred due to the arrests, such as legal expenses, hull cleaning, crew costs, and the like. (May 19, 2023 Transcript pp. 41:12-143:22; see also C-1902, Exs. C.1-C.5.) These damages shall be paid by the Levona-related entities to Eletson Gas as compensatory damages from the improper arrests of Eletson Gas vessels.

Eletson also seeks at least $10,000,000, to be determined by me in my discretion, for damages related to or arising out of Levona's other breaches of other contracts as to which Claimants were unable to specifically quantify damages, to be paid to Eletson Gas or the Preferred Nominees in my discretion. It argues that for each of those breaches, Eletson has proven that an injury in fact occurred. However, for several breaches, Dr. Furchtgott-Roth did not readily have facts available as of January 2023 sufficient to specifically quantify resultant damages. (*See, e.g.,* C-1902.0109 (noting that "due to the

character of certain of Eletson's injuries, various damages are difficult to quantify to a reasonable degree of certainty").)

Among these harms, are:

a. Risk of catastrophic loss of sensitive cargo or harm to vessels during the arrests;

b. As of result of the harmful acts of Levona and its affiliates, reduced bargaining position of the Company with business-sensitive information available to other parties, including those negotiating with the Company;

c. Reputational harm to the Company and Eletson from the actions of Levona and its affiliates with financiers and banks but also with customers, employees, and vendors;

d. Consequent to the reputational harm would be lost business opportunities, both with existing customers and with new customers;

e. The loss of access for the Claimants to both existing and new sources of capital as a result of the actions of Levona and its affiliates;

f. Management distraction to deal with the harmful acts of Levona and its affiliates; and

g. Permanent harm from the indelible record created by Levona and its affiliates.

I agree that the record supports the conclusion that the Levona-related entities' breaches caused the Company harm. For example, Mr. Hadjieleftheriadis elaborated on several of these harms in his witness statement, testifying that several of these breaches independently cost the Company millions of dollars. (C-1968 ¶ 91-101; ¶ 92 (asserting, among other claims that "Eletson would have paid millions of dollars to have avoided the breach of confidentiality and reputational damage that arose from" Kanelos' sharing of confidential information; ¶ 96 (claiming Levona's misconduct prevented the "refinancing of two of the facilities of the group—the Tufton facility and the Libera facility—which has resulted in lost financing opportunities and costs of several million dollars"); ¶ 99 ("Claimants have suffered tremendous harms due to Levona's conduct. Even if we were awarded the totality of the damages contemplated by Mr. Furchtgott-Roth's report, we still

would not be fully compensated, but Mr. Furchtgott-Roth's assessment of damages is a starting point.")

Delaware law is clear that, where a party has proven to a reasonable certainty that harm actually occurred, the trier of fact may use its discretion to determine the amount of damages that the plaintiff is entitled to. *Pers. Touch Holding Corp. v. Glaubach*, 2019 Del. Ch. LEXIS 66, at *48-49 (Del. Ch. Feb. 25, 2019) ("The law does not require certainty in the award of damages where a wrong has been proven and injury established. Responsible estimates that lack m[a]thematical certainty are permissible so long as the court has a basis to make a responsible estimate of damages. Speculation is an insufficient basis, however. Each situation must be evaluated to know whether justice will permit an estimation of damages given the testimonial record or whether the record affords insufficient basis to fix an award." (citation omitted); *see also Raishevich v. Foster*, 9 F. Supp. 2d 415, 417 (S.D.N.Y. 1998) ("a fact finder has some latitude to make a just and reasonable estimate of damages based on relevant data." (citations omitted)).

JAMS Rule 24(c) is also instructive here and it reads as follows:

> **Rule 24. Awards**
>
> (c) In determining the merits of the dispute, the Arbitrator shall be guided by the rules of law agreed upon by the Parties. In the absence of such agreement, the Arbitrator shall be guided by the rules of law and equity that he or she deems to be most appropriate. The Arbitrator may grant any remedy or relief that is just and equitable and within the scope of the Parties' Agreement, including, but not limited to, specific performance of a contract or any other equitable or legal remedy.

Accordingly, and based upon my review of the totality of the evidentiary record, I award Claimants $2,000,000 to be paid to the Company for the following damages: (a) the reduced bargaining position of the Company with business-sensitive information available to other parties, including those negotiating with the Company; (b) reputational harm to

the Company and Eletson from the actions of Levona and its affiliates with financiers and banks but also with customers, employees, and vendors; (c) lost business opportunities, both with existing customers and with new customers, as a result of the reputational harm; (d) the loss of access for the Claimants to both existing and new sources of capital; and (e) permanent harm from the indelible record created by Levona and its affiliates.

iii. Damages Arising from the Violations of the Status Quo Order

Eletson is also entitled to damages for Levona's repeated violations of the Status Quo Injunction. In its Proposed Order, Eletson seeks "an amount to be decided by the Tribunal in its discretion for damages relating to or arising out of Levona's violations of the Tribunal's Status Quo Injunction, to be paid to Eletson Gas or the Preferred Nominees in the Tribunal's discretion." (Proposed Order E(f).) In its post-hearing submission, Eletson requests that "[d]amages flowing from these violations should be included in the punitive damages assessed Levona." (Claimants' Post-Hearing Brief ¶ 799.)

Since I found that Pach Shemen's directing the trustee to commence litigation against Holdings and the commencement of the involuntary bankruptcy action both were intentional violations of the Status Quo Injunction, I award Eletson reimbursement of the attorney's fees and costs incurred in connection with those actions to be paid to the entity or individuals who paid those costs and fees. The LLCA provides that "the arbitrator shall have discretion to award reasonable attorneys' fees and reasonable travel expenses (excluding meals) to the prevailing party) (J-01, LLCA §12.14 (d); *See* JAMS Rule 24 (c).

B. <u>Punitive Damages</u>

Punitive damages in a contract action "can be awarded when conduct includes an element of ill will or an intent to cause injury or is malicious, willful or wanton." *Standard Distrib. Co. v. NKS Distribs.*, 1996 Del. Super. LEXIS 125, at *38 (Del. Super. Ct. Jan. 3,

1996) (finding punitive damages should be available for the deceit that accompanied the breach of contract in this case.") Punitive damages are permitted in breach of contract cases "[w]here the defendant's actions are similar in nature to that of a tort" or "it appears that the defendant has committed a 'willful wrong, in the nature of deceit.'" *Gillenardo v. Connor Broad. Del. Co.*, 2002 Del. Super. LEXIS 402, *36-37 (Del. Super. Ct. Apr. 30, 2002) (internal citations omitted). Dr. Furchtgott-Roth opined that if I determined that punitive damages were appropriate in this matter, a range of punitive damages measured at 3x to 9.6x compensatory damages would be appropriate. (C-1902 ¶ 94.)

Levona does not contest my ability to award punitive damages. In fact, Levona requested that I award it punitive damages of $2,000,000 for what it referred to as Eletson's "intentional and bad faith acts." (Respondent's Proposed Order p. 3.)

If there was a case warranting punitive damages, I believe this is one. The evidence establishes that Murchinson, on its own, and through Levona and Pach Shemen, has engaged in an intentionally hostile, corrupt, wanton, and deceitful campaign to the great detriment of the Company.

Murchinson corrupted and bribed an Eletson officer. The deceit continued with the intentional breach of the NDA with Blackstone. The deceit and backstabbing continued after Murchinson became the preferred holder and further continued after Eletson exercised the purchase option buying out Levona's preferred interests. It even continued during this arbitration as Murchinson disingenuously hid behind shell entities to avoid producing relevant documents and to repeatedly violate the Status Quo Injunction Order. To this day, I am convinced that all relevant documents have not been produced by Murchinson/Levona.

As discussed and cited throughout this Final Award, the record is replete with instances of Murchinson's agents engaging in deceitful and malicious behavior to further their own agenda: from Spears' secret dealings behind the Company's backs in which he bribed a Company officer and conspired with third-parties to the detriment of the Company (*see, e.g.,* C-1698, C-1699 ("Services Agreement"); C-1107 (Spears writing "I CANT STRESS ENOUGH – PLEASE DO NOT CONTACT THE VASSILIS X2 ABOUT THESE.")); to Murchinson/Levona's intentional breach of the LLCA's confidentiality obligations; to Murchinson/Levona's intentional interference with the Company's relationships with its lenders, causing the arrest of the Company's vessels, and their subsequent failure to disclose these violations to the Company; to Levona/Murchinson intentionally and knowingly breaching the LLCA by attempting to terminate management agreements and knowingly falsely telling the Company's lender that Eletson Corporation had "no right to correspond or otherwise deal with" its lenders (C-1958); to Lichtenstein's attempt to manipulate the evidentiary record by creating purported minutes of the March 10, 2022 board meeting after this arbitration was commenced (C-2023); to Levona and its agents knowingly violating—multiple times—the Status Quo Injunction Order (discussed, *supra*); to attempting to manipulate and deceive this tribunal by hiding behind shell entities while refusing to produce relevant documents, and misleading, if not outright lying, under oath.

It is clear to me that without some punitive deterrence, Murchinson's agents will continue to believe that they are not accountable for their actions.

Each of the Murchinson witnesses admitted that they actively concealed their activities, including their bribing of Kanelos, from the Company, without shame.

In addition to his attempt to perpetrate a fraud by creating a document after the commencement of this arbitration (C-2023), Mr. Lichtenstein, lied under oath, testifying that he was orally appointed "General Counsel" of Levona. There is absolutely no support for this statement, nor is it credible.

When Mr. Lichtenstein testified at the hearing on May 24, 2023, he had been practicing law for three years. He graduated from law school in 2019, articled as a Canadian lawyer in 2020 which he described as akin to a residency after law school and then joined Murchinson in 2021. (May 24, 2023 Transcript pp. 109-110).

He represented in his witness statement that he was the "general counsel" of Levona but his testimony at the hearing under oath belies that assertion. He testified as follows:

18 Q. In Paragraph 4 of your witness statement,
19 you say that "as the general counsel of
20 Levona..."
21 So, are you selling this tribunal that you
22 are the general counsel of Levona?
23 I notice it has a capital "G" and a
24 capital "C," that looks like something formal.
25 A. Yes.
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2 Q. Okay. You're the formal general counsel
3 of Levona?
4 A. I don't know what you mean by informal.
5 Q. You know what the word "formal" means?
6 A. Just as formal versus informal general
7 counsel, yeah, I don't understand it.
8 Q. Well, who appointed you to general counsel
9 of Levona?
10 A. Elliot Asa (phonetic).
11 Q. And what piece of paper did you do that
12 with?
13 A. It was orally.
14 Q. And when did he do that?
15 A. When he was the front desk director, I
16 spoke to him.
17 Q. You spoke to him, and he said you're the
18 general counsel. Do you have a business card, by
19 the way, that -- that identifies your general
20 counselship of Levona?

21 A. I don't have any business card of Levona.

(May 24, 2023 Transcript, pp. 93-94).

When pressed further by Claimant's counsel, he volunteered the following:

Q. Okay. You said you didn't have a business
6 card, but do you have an e-mail address at
7 Levona?
8 A. No.
9 Q. Do you have an e-mail address at Poch
10 Shemen?
11 A. No.
12 Q. Does Poch Shemen have an e-mail address?
13 A. Not to my knowledge.
14 Q. Does Levona have an e-mail address?
15 A. No.
Q. To communicate with you, you communicate
17 to Murchinson, correct?
18 A. Through my Murchinson e-mail address.
19 Q. Yes.
20 A. Yes.

(May 24, 2023 Transcript, p. 106)

Before the start of the evidentiary hearing, Levona's counsel insisted that Mr. Lichtenstein was critical to Levona's legal team and his presence at the entirety of the hearing was necessary. Despite my asking Levona to provide sufficient corporate records or anything in writing to substantiate its claim that Lichtenstein was an internal attorney for Levona, it provided nothing more than a certification by him where he called himself "(a Toronto based attorney for Levona and one of its board member representatives for Eletson Gas.)" (May 24, 2023 Transcript, p. 96.)

Despite that lack of support, and over the strenuous objection of Claimants' counsel, I gave Levona an opportunity for Lichtenstein to be present by permitting his attendance only after he provided his direct written witness statement to Eletson. My purpose in this prerequisite to his attending the hearing before his actual testimony was to prevent any contamination of his witness testimony. Apparently, however, that was

Lichtenstein's goal all along. He did not provide his witness statement until May 23, 2023—the penultimate day of testimony. His entire written witness statement—purportedly as "General Counsel" of Levona (LEV255 ¶ 4)—is over 37 pages and 161 paragraphs in length and addresses almost every contested factual issue in the arbitration. It is also almost entirely hearsay and relates to events of which he has zero firsthand knowledge. I give his written statement zero weight in these proceedings, as it is clear to me that he was either impermissibly listening into these proceedings remotely, or improperly speaking in depth with others who were in attendance during other witnesses' testimony so as to accomplish the very thing I intended to prevent—witness contamination.

Lichtenstein went so far as to actually manufacture evidence in this case. He tried to argue that minutes of a March 10, 2022 Board meeting were created contemporaneously and proved that Eletson did not exercise the purchase option. (J-33.) However, this document, and Mr. Lichtenstein's testimony surrounding it, is not credible. As discussed above, Eletson credibly provided evidence about the metadata behind the document that supports the inference that it was edited by Mr. Lichtenstein *after* this arbitration commenced. (C-2023.)

It is clear from his testimony that this young lawyer does not understand the most basic ethical obligations of an attorney including to at all times avoid the appearance of an impropriety. This is glaringly illustrated in the following colloquy during his hearing testimony:

> Q. You willingly participated in this -- you,
> 7 as a lawyer, willingly participated in this
> 8 communication, correct?
> 9 A. I wrote this e-mail.
> 10 Q. And, in fact, I think is what you are
> 11 telling The Court is that you never, in fact,
> 12 objected to doing this.
> 13 A. Object to doing what?

14 Q. Objecting -- objected to making pretend
15 that you didn't know Mr. Kanelos when you did.
16 A. It was none of the other
17 directors' -- they didn't have a need to know
18 this.
19 Q. You were making pretend, right?
20 A. I don't know if the word is making
21 pretend. It's just a game. (May 24, 2023 Transcript, p. 164)

Murchinson/Levona continue through today to engage in gamesmanship both in connection with their refusal to honor their obligations under the BOL including their attempts to control the Company's assets as well their continuation of the multiple legal proceedings they have commenced—through Spears and Lichtenstein—in violation of the Status Quo Injunction Order. This is none surprising since in the words of their own "General Counsel" this is all "just a game."

As a result of the bad-faith, deceitful, wanton and corrupt manner in which Levona treated Claimants with an intent to injure them, bribed an Eletson officer, disregarded their obligations to Claimants and to the Company, intentionally and willfully breached the LLCA, committed associated torts against Claimant, and violated the orders of this arbitration, I find that punitive damages in the amount of $43,455,122.21, equal to the amount of compensatory damages, are warranted to be paid to the same entities that are to receive the underlying compensatory damages. *See, e.g., Standard Distrib. Co.*, 1996 Del. Super. LEXIS 125, at *38; *Barba v. Bos. Sci. Corp.*, 2015 Del. Super. LEXIS 537, at *31 (Del. Super. Ct. Oct. 9, 2015) (*citing State Farm Mut. Auto. Ins. Co. v. Campbell.* 538 U.S. 408 (2003)).

C. Interest, Costs and Fees

Levona must pay pre-judgment interest on all non-punitive damages at 10 percent per annum. Eletson asserts that the appropriate pre-judgment rate of interest should be 10 percent, as established under the parties' agreements. Specifically, Eletson refers to the

Intra-Group Loan, which provides for a rate of 10 percent per annum, for the loan that Levona provided the Company. (*See* J-07 Section 6.2.) Levona has not offered an alternative rate that it believes is more appropriate. Thus, I conclude that it is reasonable to apply the rate previously negotiated by the parties in other transactions.

As indicated in Dr. Furchtgott-Roth's first report, all of the compensatory damages he quantified were adjusted for interest up through January 30, 2023. Thus, Levona is obligated to pay additional prejudgment interest on those damages from January 30, 2023 up through the earlier of the date of payment of the awarded damages or the date of confirmation of this award by a court of competent jurisdiction.

Eletson also seeks the recovery of its costs and attorneys' fees for its prosecution and defense of this action pursuant to Section 12.14(d) of the LLCA, which provides that "the arbitrator shall have discretion to award reasonable attorneys' fees and reasonable travel expenses (excluding meals) to the prevailing party, which fees may be set by the arbitrator of such action or may be enforced in a separate action brought before an arbitrator for that purpose in accordance with this Section 12.14, and which fees shall be in addition to any other relief that may be awarded."

Since Claimants have prevailed in this arbitration, I grant Claimants' request for its costs and attorneys' fees pursuant to Section 12.14(d) of the LLCA and JAMS Rule 24(g) which read as follows:

> **Rule 24. Awards**
> (g) The Award of the Arbitrator may allocate attorneys' fees and expenses and interest (at such rate and from such date as the Arbitrator may deem appropriate) if provided by the Parties' Agreement or allowed by applicable law. When the Arbitrator is authorized to award attorneys' fees and must determine the reasonable amount of such fees, he or she may consider whether the failure of a Party to cooperate reasonably in the discovery process and/or comply with the Arbitrator's discovery orders caused delay to the proceeding or additional costs to the other Parties.

VII. ELETSON'S APPLICATION FOR FEES, EXPENSES, COSTS AND INTEREST

In the Corrected Interim Award, I granted Claimants' request for the opportunity to produce evidence of their recoverable costs, fees, and interest, and set a briefing schedule, with which the parties have complied.

In its Opening Affirmation, Eletson seeks fees, expenses, and costs in the amount of $9,850,222.99 in connection with the arbitration, and $3,007,266.20 in connection with the Bankruptcy and Bondholder Litigation, for a total of $12,857,489.19. This amount includes:

- $7,179,802.80 in legal and support staff fees incurred by Reed Smith in connection with the arbitration;
- $301,689.66 in disbursable costs and expenses incurred by Reed Smith in connection with the arbitration;
- $1,794,950.70 of a success fee owed to Reed Smith by Eletson under their engagement letter for the arbitration, which was triggered by the finding in the Corrected Interim Award that Eletson is the prevailing party in this arbitration;
- $344,691.99 in fees charged by Eletson's expert witnesses in connection with the arbitration, other than certain fees charged by one Eletson expert, Peter Daniel, whose expenses are primarily included as professional fees in Reed Smith's bills and included in the $7,179,802.80 referenced above;
- $50,986.27 in fees charged for trial support by Magna Legal Services and Transperfect Legal Solutions in connection with their trial support services in the arbitration;
- $251,878.47 in costs paid to JAMS for administrative, arbitrator and law clerk expenses in connection with the arbitration;
- $2,996,173.35 in legal and support staff fees incurred by Reed Smith in connection with the bankruptcy and Bondholder Litigation; and
- $107,082.35 in disbursable costs and expenses incurred by Reed Smith in connection with the bankruptcy and Bondholder Litigation.

Claimants note that Eletson is not seeking the reimbursement of attorney and non-attorney timekeeper fees if such attorney or timekeeper did not bill at least 15 hours to one of the two applicable Reed Smith client matter numbers. As a result, their total fee request of $12,857,489.20 has been discounted in the amount of $73,776.90 for the arbitration and $95,989.50 for the Bankruptcy and Bondholder Litigation. Second, Eletson is not seeking fees for its Greek counsel at the Timagenis Law Firm, who expended at least 700,000 euro in relation to the relevant matters. Third, in the engagement letter for the Bondholder and Bankruptcy Litigation, Reed Smith provided Eletson with a ten percent discount on all legal fees, which is reflected in the attached invoices and in the overall amount sought through this application.

The requested sum, however, does include fees that were expended in Eletson's preparation and filing of a New York state court complaint against Murchinson, which was folded into the bankruptcy. Eletson has indicated that to the extent I believe that such fees are outside the scope of those recoverable by Eletson, based on Eletson's review of the applicable invoices for the Bondholder Litigation contained in Exhibit 6 to their Opening Affirmation, approximately $260,000 worth of billing entries made some reference to work relating to Eletson's complaint against Murchinson. (Opening Affirmation p. 16.). Eletson also acknowledges that their application includes *de minimis* fees, reflected in Eletson's invoices for the arbitration, in relation to two "nuisance litigations" that Eletson claims are part and parcel with the arbitration, that Levona filed, after the commencement of the arbitration, against persons associated with Eletson in Delaware Chancery Court, *Levona Holdings, Ltd. vs. Vassilis Kertsikoff, et al.*, 2022-0823-MTZ, and the United States District Court for the Southern District of Texas, *Levona Holdings, Ltd. vs. Vassilis Kertsikoff, et al.*, 4:22-cv-02988. (Opening Affirmation p. 16.)

Eletson argues that their billing rates and staffing were reasonable given that this arbitration was a "bet-the-company dispute seated in New York City" with lawyers "required to work on an expedited timeline . . . on many fronts in multiple proceedings that required different specialties." (Opening Affirmation p. 4.)

Part of the requested fee amount includes a success fee in the amount of $1,794,950.70. In December 2022, Reed Smith and Eletson reached an agreement that Eletson would withhold 25% of each invoice, retroactive to the commencement of the matter, and if they were successful in the arbitration, the client would pay Reed Smith two times the amount withheld. In other words, Reed Smith would receive an "upside" from this arrangement, in the event of success, of an additional 25% of its fees.

Eletson also seeks additional pre-judgment interest at the rate of 10 percent in the amount of $2,496,081.87, which is the amount of interest running from January 31, 2023 through August 31, 2023. (Opening Affirmation p. 25.)

Finally, Eletson requests that "the Tribunal retain jurisdiction under Section 12.14(d) of the LLCA and/or JAMS Rules to enable Eletson efficiently to seek a subsequent and related award for additional fees and expenses that it has and will be required to spend since July 28, 2023," including to enforce the Corrected Interim Award and this Final Award. (*Id.*)

Levona opposes each of Eletson's requests.

As for Claimants' requests for fees, expenses and costs in the arbitration, Levona argues that Claimants' requests should be denied because they were neither the prevailing party nor the party responsible for the costs of the arbitration.

First, Levona argues that to be a prevailing party for attorney-fee purposes, one must "prevail on the central claims advanced, and receive substantial relief in consequence thereof." (Respondent's Affirmation p. 12, *citing Liberty Mut. Ins. Co. v. Brutus*, 2022 N.Y. Misc. Lexis 4154 (Sup. Ct. NY, Aug 16, 2022) (*quoting Sykes v. RFD Third Ave. I Assoc.,*

LLC, 39 AD3d 279, 833 N.Y.S.2d 76 (1st Dept. 2007); *see also Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983) ("where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained.")).

Here, Levona contends that Reed Smith represents Eletson Holdings and Eletson Corporation, not Eletson Gas or the Preferred Nominees, the latter entities being non-parties to whom the Corrected Interim Award awarded compensatory damages. According to Levona, Eletson, despite being the party advancing the claims in this arbitration, did not receive substantial relief in consequence of those claims, and thus, Eletson is not the prevailing party.

Levona also argues that Eletson was not the party responsible for paying the legal fees and costs. (Respondent Affirmation pp. 13-14.) Rather, Ms. Karastamati testified that that the Greek families through the Preferred Nominees were responsible for supporting the legal expenses and Reed Smith's affirmation does not address how the fees were paid, or who was ultimately responsible for doing so.

As to specific objections to the amounts included in Eletson's fee request, Levona argues that Reed Smith's bills are unreasonable. First, Levona argues that curiously the total amount of fees across all lawsuits is the exact amount due under the IntraGroup Loan.

In addition, Levona argues that Reed Smith improperly block-billed their time entries, which makes Levona unable to discern what time may have been spent on unrelated matters, for example, the Texas and Delaware lawsuits. (Respondent's Affirmation pp. 16-17.)

Levona also contends that Reed Smith overstaffed the matter. One example of the alleged overstaffing was, according to Levona, the attendance and billing of ten attorneys at the closing argument for the hearing. (*Id.* p. 18.) Levona also points to the number of hours

Levona's primary counsel has billed for this matter, which, without providing any supporting documentation, Levona states was roughly half the total hours of Reed Smith. (*Id.*)

With respect to the success fee, Levona argues that Reed Smith has not provided any written evidence of the success fee, and therefore, has not satisfied its burden of proof. Moreover, Levona does not have responsibility to pay for Eletson's "bet" and if any award for attorneys' fees is awarded, it should be reduced to only the amount that Eletson has actually paid Reed Smith.

Levona objects to the inclusion of any fees for the Texas and Delaware lawsuits, as these suits are against officers of the Company, not parties to the arbitration, and the awarding of fees here would deny those "jurisdictions their application of the American rule." (Respondent's Affirmation pp. 14-15; *citing Mansfield Realty, I., LLC v. Mansfield LLC,* 2023 NY Slip Op 31419 (U), ¶; *see also Dreisbach v. Walton*, 2014 Del. Super. LEXIS 557, *10 (Del. Super. Ct. Oct. 27, 2014) ("The United States Supreme Court has held that attorney's fees should not be awarded for work related to claims distinct from the claim on which the party was successful.")

Levona argues that I lack "jurisdiction to make any ruling related to the appropriateness or validity of [the Bankruptcy or Bondholder Litigation], the entitled [sic] of any party to those actions to recover its incurred fees, or the reasonableness of any fees sought in respect of those actions." (Respondent's Affirmation p.6.) Rather, Levona asserts that only the Bankruptcy Court can award fees in a bankruptcy action and the awarding of fees in New York for a state action is prohibited unless it is authorized by statute. (*Id.*). It further argues that my awarding of fees here could result in inconsistent rulings if the other courts determine differently. Furthermore, Levona argues that I am not in a position to determine the reasonableness of the fees in the Bankruptcy or Bondholder Litigation, nor is Levona.

Finally, Levona argues that the debtor in the Bankrupty and the defendants in the Bondholder Litigation include, in addition to Eletson Holdings, third parties who are not present in this arbitration, and thus, a third-party may not claim the benefit of a fee shifting clause unless they are intended third-party beneficiaries, for which there is no evidence. (Respondent's Affirmation p. 7, *citing Hub Elec. Co. v. Gust. Constr. Co.,* 585 F.2d 183, 188-89 (6th Cir. 1978); *Redzepagic v. Hammer,* 2017 U.S. Dist. LEXIS 27984, at *22-23 (S.D.N.Y. Feb. 27, 2017) (party cannot benefit from attorney fee shifting provision because it was not the party that could recover under the agreement.)) According to Levona, Eletson has not met its burden in establishing how Eletson Holdings is entitled to full recovery of the fees incurred in connection with the Bankruptcy and Bondholder Litigation when the parties represented include non-parties to this arbitration. (Respondent's Affirmation p. 8.)

Thus, Levona requests that I deny Eletson's fee request in its totality.

Alternatively, Levona argues that in the event I am to award Eletson attorneys' fees, I should, at most, award $3,130,160.80, which reflects: (1) a reduction in the amount of $1,794,950.70 for the fees Reed Smith did not expect its client to pay and another reduction of $1,794,950.70 for the subsequent "success fee"; and (2) a further reduction of the fees by 50% due to Reed Smith's inappropriate proof and unreasonable overstaffing, block billing, and lack of detail. Levona argues that the 50% reduction is appropriate in light of the fact that Levona's counsel billed less than 50% of the time billed by Eletson's counsel. (Respondent's Affirmation p. 23.)

With respect to pre-judgment interest, Levona argues that because the Corrected Interim Award awards damages to Eletson Gas and the Preferred Nominees, Eletson is not entitled to seek additional prejudgment interest on their behalf. Thus, the request for an additional award is inappropriate and should be denied.

Finally, Levona asserts that it is neither appropriate, nor legally permissible, for me to retain jurisdiction over the parties so that Eletson can make a future application for additional fees. Rather, once I enter my determination on fees, this Tribunal becomes *functus officio*. (Respondent's Affirmation p. 9.) Moreover, this request by Eletson for continued arbitral jurisdiction was made for the first time in the Opening Affirmation and that alone is reason to deny it. (*Id.* p. 10.)

A. Fees, Expenses, and Costs.

I find that Claimants' request for fees, expenses, and costs in this arbitration to be reasonable, with one exception, which I will address below.

Section 12.14(d) of the LLC Agreement grants this Tribunal the "discretion to award reasonable attorneys' fees . . . to the prevailing party," and JAMS Rule 24(g) allows the Tribunal to "allocate attorneys' fees and expenses and interest (at such rate and from such date as the Arbitrator may deem appropriate) if provided by the Parties' Agreement or allowed by applicable law." Under applicable law, "when a contract provides that in the event of litigation the losing party will pay the attorneys' fees of the prevailing party, the court will order the losing party to pay whatever amounts have been expended by the prevailing party, so long as those amounts are not unreasonable." *F.H. Krear & Co. v. Nineteen Named Trustees*, 810 F.2d 1250, 1263 (2d Cir. 1987); *Diamond D Enters. USA, Inc. v. Steinsvaag*, 979 F.2d 14, 19 (2d Cir. 1992) (same); *Mahani v. EDIX Media Group, Inc.,* 935 A.2d 242, 245-46 (Del. 2007) (fees award was reasonable where it was "based on facts in the record, and was neither arbitrary or capricious").

In determining reasonableness, Delaware courts look at the following factors:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent. *See Mahani*, 935 A.2d at 246 (*citing in part,* Del. Lawyers' R. of Prof. Conduct 1.5(a)(1)).

These factors support Eletson's fee request. Reed Smith's hourly rates are within what courts in New York City have found reasonable. Reed Smith's lawyers' hourly rates ranged from $1610 for Mr. Solomon, Claimants' lead counsel, $1275 for Mr. Underwood, Claimants' second chair, and between $900-$425 per hour for other partners, counsel, associates, and paralegals.

Indeed, several Southern District courts have found that Reed Smith's current rates, when adjusted for inflation against the rates considered during the litigation at issue, were reasonable. *See, e.g. New York City. Vista Outdoor, Inc. v. Reeves Family Tr.*, 2018 U.S. Dist. LEXIS 102224, at *19 (S.D.N.Y. May 24, 2018) (hourly rates up to $1,260 in 2018 were "not excessive in the New York City 'big firm' market"); *Angelo, Gordon & Co., L.P. v. MTE Holdings, LLC*, 2021 U.S. Dist. LEXIS 70271, at *6 (S.D.N.Y. Apr. 12, 2021) (partner rates of $1,175 and $1,350 per hour for partners at large law firm, "though on the higher end, [were] comparable to rates awarded in this jurisdiction"); *see also In re Relativity Fashion, LLC*, No. 15 Br. 11989 (Bankr. S.D.N.Y. June 10, 2016) (ECF No 1965) (awarding hourly rates of up to $1,225—in 2016—for Jones Day partners).

Moreover, as reflected in recent bankruptcy fee application filings submitted by New York City counsel at large firms, rates at even $2,000 an hour are common for lead

counsel. *See, e.g., In re SVB Financial Group*, Case No. 23-10367 (MG) (Bankr. S.D.N.Y. 2023) (ECF No. 475) (fee application by large New York firm with rates over $2,000 for partners, between $1,500 and $1,700 for counsel, and $775 to $1,475 for associates).

Notably, Levona's counsel does not argue that the hourly rates of Reed Smith were unreasonable or even high. It is further worth noting in this connection that Levona recently retained new counsel, Quinn Emanuel Urquhart & Sullivan, LLP, a firm that has been reported to have hourly rates ranging for partners between $1,385-$2,130, as of October 2022. (*See* Opening Affirmation, Exhibit 10.)

In addition, the amount of time billed by the Reed Smith attorneys in this arbitration is reasonable in light of the extensive number of filings and the highly contested nature of these proceedings. I adjudicated numerous disputes, including multiple challenges to JAMS' jurisdiction, several requests for injunctive and other preliminary relief by both parties, successive motions to strike Eletson's pleadings, many motions to compel discovery from both parties, and multiple motions *in limine*. Each of these applications entailed substantial factual and legal research and development, briefing, and often extensive oral argument. According to Claimant—and notably, not disputed by Levona—over 200 litigation documents were filed in JAMS, over 10 hearings were conducted before me, even before the plenary hearing, 4 witnesses were deposed, 15 expert reports were submitted, and approximately 26,000 documents totaling over 160,000 pages were produced. (Opening Affirmation p. 6.)

In addition, the parties (i) submitted pre-hearing briefs that collectively exceeded 130 pages of legal argument, (ii) submitted proposed exhibit lists that collectively exceeded 2,200 exhibits, (iii) participated in a pre-hearing conference that lasted the

better part of a day, (iv) held an evidentiary hearing that lasted 7 full days, during which several hundreds of exhibits were introduced and 14 witnesses were examined and/or cross-examined, (v) submitted post-hearing briefing that collectively exceeded 320 pages of legal argument and proposed findings of fact, and (vi) conducted a long and extensive post-hearing oral argument lasting many hours. (Opening Affirmation p. 6.)

This said, I agree with Levona that an award of attorneys' fees should not include the time incurred in connection with the state court action that Eletson commenced against Murchinson. Eletson has estimated its fees for that action to be approximately $260,000. Notably, Levona has not contested the amount estimated by Eletson, nor proposed a different calculation.

I disagree with Levona's argument for the exclusion of fees incurred in this arbitration that relate to the Texas and Delaware litigations, which Eletson claims to be "de minimis". Levona does not challenge or dispute Eletson's claim that these costs are "de minimis," and acknowledges that Reed Smith did not represent the individual Eletson officers in connection with those suits. (*See* Respondent Affirmation p. 16.) Thus, it is reasonable to conclude that the time entries referencing those actions are directly related to this arbitration. Reed Smith needed to review the Texas and Delaware complaints and stay apprised of those lawsuits in order to understand their connection and relevance to the claims in this arbitration.

As for the non-attorney amounts requested, including disbursable expenses, expert fees, trial support costs, and JAMS administrative and arbitrator costs, these costs are shiftable to Respondent under the LLCA and JAMS Rule 24(f). *See, e.g.*, *Themis Capital v. Democratic Republic of Congo*, 2014 WL 4379100, at *9 (S.D.N.Y. Sept. 4, 2014) ("[C]ourts in this District routinely reimburse prevailing parties for the costs of

expert witnesses and consultants"); *Weiwei Gao v. Sidhu*, 2013 WL 2896995, at *6 (S.D.N.Y. June 13, 2013) (granting expert costs because they were "reasonable and necessary" and because the "Fee Sharing Agreement provides for recovery of 'other costs incurred"); *Austrian Airlines Oesterreichische Luftverkehrs AG v. UT Fin. Corp.*, 2008 WL 4833025, at *9 (S.D.N.Y. Nov. 3, 2008) (because the contract "clearly—and undisputedly—provide[d] for reasonable attorneys' fees 'and other costs'" and because defendant did not use "duplicative or unnecessary expert witnesses," the Court declined to "make any reductions in the costs related to [defendant's] use of these witnesses"); *Ambac Assur. Corp. v. Adelanto Pub. Util. Auth.*, 2013 WL 4615404, at *1, *7 (S.D.N.Y. Aug. 29, 2013) (awarding expenses billed by e-discovery vendor pursuant to a fee-shifting provision); *HSH Nordbank AG N.Y. Branch v. Swerdlow*, 2010 WL 1141145, at *3, *6–7 (S.D.N.Y. Mar. 24, 2010) (awarding $408,071.34 for services related to electronic data storage and hosting for e-discovery pursuant to a fee-shifting provision). Indeed, Respondent does not even address these costs and expenses in its opposition to Eletson's application.

I further award Eletson the "success fee" in the amount of $1,794,950.70. In circumstances such as this, the law is clear that the fee shifting provision in the parties' agreement obligates Levona to pay these contingent fees that Eletson now owes to Reed Smith. *See IAC/InterActiveCorp v. O'Brien,* 26 A.3d 174, 179 (Del. 2011) (rejecting argument that contingent legal fees were "not incurred because they do not represent work done, but rather the success achieved"; finding "A premium or contingent fee is payable for work done, if that work is successful. The fact that the amount of the fee is not set until the result is obtained does not change the fact that the fee is incurred based on hours or work performed for the client."); *Williams Cos. v. Energy Transfer LP*, 2022

Del. Ch. LEXIS 207, at *7-8 (Del. Ch. Ct. Aug. 25, 2022) ("There is nothing inherently unreasonable in enforcing a contractual fee-shifting arrangement to cover a contingent fee award"; awarding fee shifting on contingent fee arrangement); *S'holder Representative Servs. LLC v. Shire US Holdings, Inc.*, 2021 Del. Ch. LEXIS 81, at *2-3 (Del. Ch. Ct. April 27, 2021) (same; noting party opposing fee shifting could have negotiated for a contract that did not permit the shifting of contingent fees).

Accordingly, I award Claimants payment of their attorney's fees, expenses and costs for this arbitration in the total amount of $9,590,222.99.

For many of the same reasons, I also find Claimants' application for fees and costs for the Bankruptcy and Bondholder Litigations in the amount of $3,007,266.20 reasonable.

I note that Claimants submitted 10 supporting exhibits along with their Opening Affirmation that further substantiate the reasonableness of their application for fees, expenses, and costs in this arbitration, the Bankruptcy and the Bondholder Litigation:

- Exhibit 1 is the client Affidavit of Laskarina Karastimati attesting to the reasonableness of the fees and expenses paid and incurred by Eletson in connection with the matters as to which the Tribunal awarded fees and expenses;
- Exhibit 2 is the expert Affidavit of Dr. Harold Furtchgott-Roth calculating the additional interest the Tribunal awarded to Eletson in the Corrected Interim Award;
- Exhibit 3 is a set of summary charts of the totals set out herein;
- Exhibit 4 is a list of Reed Smith timekeepers by title, listing hours billed, rates, and value;
- Exhibit 5 is combined invoices related to this arbitration;
- Exhibit 6 is combined invoices related to the Bankruptcy and Bondholder Litigation;
- Exhibit 7 is combined expert invoices related to this arbitration;
- Exhibit 8 is combined trial support invoices related to this arbitration;

- Exhibit 9 is the biographies of Reed Smith attorneys that worked on this arbitration, the Bankruptcy, and/or the Bondholder Litigation; and
- Exhibit 10 is an article setting forth the rates of Quinn Emanuel Urquhart & Sullivan, LLP as of October 27, 2022.

Curiously, Levona did not submit any documentation to support their opposition to Claimant's application or support their argument that Reed Smith overstaffed or overbilled the matter. Indeed, I do not have any documentation to support Levona's assertion that Reed Smith billed more than double the hours of Frankel, Rubin, Klein, Payne & Pudlowski P.C. ("Frankel Rubin"). Levona did not attach, as is customary in responsive opposition submissions to fee applications, any supporting documentation demonstrating their own legal fees.

Levona's additional arguments in opposition to Claimants' application are unavailing.

Levona's argument that Eletson was not the prevailing party and that "the prevailing party was not a party to the Arbitration" is completely without merit. (Respondent's Affirmation p. 13.) In making this argument, Levona also implies that the propriety of the award to Eletson Gas and the Preferred Nominees, as purported non-parties, requires further adjudication. Putting aside that this is a merits issue that was already decided in the Corrected Interim Award, Levona's contention is simply untenable. The possibility that, if Eletson succeeded on its claims, relief would not be awarded to Eletson, but for example to Eletson Gas, has been known since the commencement of this arbitration.

From the start of this arbitration, the claims—*and Levona's counterclaims*—related to who held the preferred interests. A primary question to be answered in this arbitration was whether Eletson exercised the option under the BOL, thereby transferring the preferred interests pursuant to the terms of the BOL. The express terms of the BOL

made clear that, in the event the option was exercised, the preferred interests would transfer to Eletson Gas or its nominee: "Levona hereby grants Eletson Gas the option . . . for ***either Eletson Gas or its nominee*** to purchase all of the membership interests held by Levona in Eletson Gas . . . ." (J-6 ¶ 2.1 (emphasis added); *see also*, Corrected Interim Award pp. 26-31.)

Despite filing motions on numerous issues, including multiple motions to strike claims and allegations, Levona never objected to Eletson having standing to enforce the terms of the BOL, even though, if successful, relief would be awarded—as expressly set forth in the BOL—to "Eletson Gas or its nominee."[8]

Indeed, given the disputed ownership of Eletson Gas, which was the catalyst to the filing of this arbitration, the only entities who could bring this arbitration to dispute the ownership of the preferred interests of Eletson Gas, would be Eletson and Levona, as shareholders of Eletson Gas. In other words, Eletson Gas could not bring this claim on its own given that Levona contended it continued to own the preferred interests of, and therefore had a controlling interest in, Eletson Gas. It has also been clear throughout these proceedings that Eletson would turn over any damages to Eletson Gas, depending upon my ultimate determinations in this arbitration. (*See* Third Amended Statement of Claims at ¶ 64(p); *see also* Claimant's Post-Hearing Brief at ¶ 11.)[9]

Accordingly, it is Eletson that substantially prevailed on its claims in this arbitration and any attempts by Levona to undermine previous findings in this arbitration

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[8] Levona objected only to Eletson's argument that the preferred interests had been contingently transferred *from Eletson Gas* to the Preferred Nominees.

[9] It is worth noting that had I found that Levona retained the preferred interests and awarded Levona certain relief that it had requested, some of that relief would have in fact been derivative relief. While Levona sought damages under a theory of tortious interference in connection with the Unigas offer letter, any damages suffered as a result of a decrease in sale price, would have been to the Company, and only indirectly to Levona, as the preferring shareholder.

based on new arguments that the relief was inappropriately granted to Eletson Gas, or a nominee of the Eletson Gas, are summarily rejected.

In addition, contrary to Levona's assertion, Reed Smith's use of block billing is not unreasonable, and a review of Reed Smith's invoices support a finding that sufficient detail was provided in the invoices to demonstrate that the time was billed productively. *See Gentel Wave Shipping S.A. v. Transfield Shipping, Inc.*, 2010 U.S. Dist. LEXIS 13210, *4 (S.D.N.Y. Feb. 11, 2010) (use of block billing "has been held to comply with Second Circuit standards and client expectations."). Courts will award attorneys' fees in connection with block billed entries where there is "enough detail and specificity so as to afford reasonable confidence that the time billed was productively spent, even if it is impossible to reconstruct the precise amounts of time allocable to each specific task listed in the block entry." *Beastie Boys v. Monster Energy Co.*, 112 F. Supp. 3d 31, 54 (S.D.N.Y. 2015); *Aurora Comm. Corp. v. Approved Funding Corp.*, 2014 U.S. Dist. LEXIS 108949, *16 (S.D.N.Y. Aug. 6, 2014).

I also reject Levona's claim that Reed Smith overstaffed the matter. To use one of the examples Levona raised, the fact that ten attorneys attended and billed time at the closing argument does not lead to the conclusion that Reed Smith overstaffed the matter. In evaluating the reasonableness of staffing, it is not proper to isolate one event and evaluate it in a vacuum. This arbitration concerned the ownership of the preferred interests in Eletson Gas, a company with assets that were indisputably valued in the hundreds of millions of dollars, as well as a request for an award of compensatory damages in eight figures.

Moreover, the billing entries for the closing argument fees to which Levona cites as evidence of overstaffing reflect that time was spent not just attending the argument but

also on working on the closing argument presentation. (*See,* Opening Affirmation, Exhibit 5 pp. 308-333.) Regardless, to determine that the time billed by attorneys was reasonable, I need not reach a conclusion as to the value added by each timekeeper at each event. Rather, in determining fees, I look to "what a reasonable, paying client would be willing to pay." *Arbor Hill Concerned Citizens Neighborhood'Ass'n v. City of Albany & Albany Cty. Bd. of Elections,* 552 F.3d 182, 194 (2d Cir. 2008). Here, the fees incurred by Reed Smith that have been already paid, or that the client has agreed to pay, are reasonable and the reasonableness of those fees has been attested to in client affirmations.

Importantly, it should not be forgotten this arbitration was a bet-the-company case for Eletson, with a mandated expedited timeline for arbitration. I agree with Eletson that, even putting aside the lack of any evidentiary support for Levona's assertion that Levona's counsel expended half as many hours as Reed Smith, the time expended by Frankel Rubin is not an appropriate measure for comparison, given my repeated suggestions at various times in this arbitration that Frankel Rubin should increase its staffing to meet the expedited timelines of this arbitration.

Similarly, the arguments Levona raises in opposition to Claimants' requests for fees in connection with the Bankruptcy and Bondholder Litigation fail. Levona's invocation of the American rule is misplaced. In the Corrected Interim Award and in this Final Award , I ruled that Levona's alter ego, Pach Shemen repeatedly violated the Status Quo Injunction Order. Since I ruled that Pach Shemen's directing of the commencement of the Bondholder Litigation against Eletson Holdings, and the commencement of an involuntary bankruptcy action against Eletson Holdings were both intentional violations of the Status Quo Injunction, I awarded Eletson reimbursement of the attorney's fees and

costs incurred in connection with those actions to be paid to the entity or individuals who paid those costs and fees. (*See* JAMS Rule 29 stating that the "Arbitrator may order appropriate sanctions for failure of a Party to comply with its obligations under any of these Rules or with an order of the Arbitrator. These sanctions may include, but are not limited to, assessment of Arbitration fees and Arbitrator compensation and expenses, assessment of any other costs occasioned by the actionable conduct, including reasonable attorneys' fees; exclusion of certain evidence; drawing adverse inferences; or, in extreme cases, determining an issue or issues submitted to Arbitration adversely to the Party that has failed to comply.")

In other words, the award of attorneys' fees was as damages to compensate for the intentional violations by Levona, through its alter ego, Pach Shemen, of the Status Quo Injunction Order—not a finding of a prevailing party's entitlement to fees or a finding under a fee-shifting provision. The court jurisdictions remain free to render any rulings relating to fees in connection with the merits of those litigations. "Where an arbitration clause is broad, arbitrators have the discretion to order such remedies as they deem appropriate. This is because it is 'not the role of the courts to undermine the comprehensive grant of authority to arbitrators by prohibiting' them from fashioning awards or remedies to 'ensure [] a meaningful final award.'" *Reliastar Life Ins. Co. v. EMC Nat'l Life Co.,* 564 F.3d 81, 86 & n.2 (2d Cir. 2009).

Moreover, the attorney affirmation, client affidavit, and invoices from the Bankruptcy and Bondholder Litigation also provide me with sufficient basis to determine the reasonableness of the fees requested. *See Simmons v. N.Y.C. Transit Auth.*, 575 F.3d 170, 174 (2d Cir. 2009) ("The presumptively reasonable fee boils down to what a reasonable, paying client would be willing to pay, given that such a party wishes to spend

the minimum necessary to litigate the case effectively.") (citation omitted). Levona itself also had the ability to determine the reasonableness of Reed Smith's invoices. Even if Frankel Rubin may not be counsel of record in those lawsuits, Levona's agents, Spears and Lichtenstein, in particular, are involved in those proceedings, and subject to compliance with the confidentiality restrictions ordered in this arbitration, could have assisted Levona's counsel in connection with its opposition to Eletson's fee application.

Finally, Levona's argument that the Bondholder Litigation and Bankruptcy involve Eletson-related entities that are not parties to this arbitration, and therefore, Eletson is not entitled to the full recovery of the fees billed in those cases, is unavailing. The invoices reflect that the work done by Reed Smith that is included in the fee request was done solely on behalf of Eletson Holdings or jointly on behalf of Eletson Holdings and the other entities. The information provided in support of Eletson's application meets their burden of reasonableness. Levona has provided nothing to infer that the amount of fees incurred was greater simply because Reed Smith is representing multiple related entities in those litigations, as opposed to only Eletson Holdings.

B. Additional Pre-Judgment Interest

The Corrected Interim Award provided for compensatory damages that included pre-judgment interest running up through January 30, 2023 at a rate of 10 percent, and also provided for the recovery of additional pre-judgment interest at the same rate running until such date that the award is paid or confirmed in a court proceeding. Claimants submitted, along with the Opening Affirmation, the Fourth Expert Report by Dr. Harold Furchtgott-Roth, which calculates the relevant amounts of additional pre-judgment interest owed by Levona. In accordance with Dr. Furchtgott-Roth's

calculations, the total amount of pre-judgment interest running up to August 31, 2023 is $2,496,081.88. (Opening Affirmation p. 25.)

Thus, the pre-judgment interest running up to August 31, 2023 is awarded as follows:

- To Eletson Gas: $1,319,163.14.
- To the Preferred Nominees: $1,176,918.74.

To the extent Levona did not satisfy the Corrected Interim Award by August 31, 2023, additional pre-judgment interest will continue to run in accordance with the terms of the Corrected Interim Award. Dr. Furchtgott-Roth sets out how to calculate that additional interest during that indefinite time period using the following formula:

> {(Award amount as of August 31, 2023)*(1.008333)^[(number of whole months since August 31, 2023) + ((number of days in partial month)/(total number of days in partial month))] – (Award amount)}.
>
> (Opening Affirmation p. 26, citing Exhibits 2, 3.)

I agree with Claimants that pre-judgment interest at a rate of 10% running from the date of this Final Award until the earlier of the date of payment of the amount due or the date of confirmation of this award by a court of competent jurisdiction shall accrue on the awarded amount of attorneys' fees, costs and expenses and the calculation of that interest amount shall be done using the same formula above, except substituting the total amount of attorneys' fees, costs, and expenses determined by the arbitrator for the "Award amount".

Notably, Levona does not challenge the calculation of the interest amount Eletson requests or the calculation proposed to calculate additional interest that may be due in the future. Nor does it respond to Eletson's request for interest on the fees, costs and

expenses, other than arguing that both attorneys' fees and interest should be denied outright.

With respect to pre-judgment interest, Levona argues that because the Corrected Interim Award awards damages to Eletson Gas and the Preferred Nominees, Eletson is not entitled to seek additional prejudgment interest on their behalf and therefore the request for an additional award is inappropriate and should be denied. This argument by Levona is both untimely and without merit.

C. Retention of Arbitral Jurisdiction

I deny Eletson's request to retain jurisdiction after this Final Award to enable Eletson to make future fee applications and agree with Levona that I made clear in the Corrected Interim Award, that "[u]pon receipt of all these papers, the matter shall be deemed submitted for a decision on the final award at that time." I also agree with that the arbitrator becomes *functus officio* after the issuance of a final award.

This said, both in the Corrected Interim Award and tin his Final Award I make clear that I have awarded Eletson fees, costs, and expenses in connection with this arbitration as well as the Bankruptcy and the Bondholder Litigation. Moreover, there is a continuing accrual of pre-judgment interest on any accrued and unpaid amounts running up until the earlier of the date of payment of the amounts due or the date of confirmation of this Final Award by a court of competent jurisdiction, as well as the formula that should be used to calculate any additional interest. Eletson has, among other options, the ability under Section 12.14(d) of the LLCA to seek additional relief in the event it needs to enforce payment of the amounts awarded.

VIII. CONCLUSION AND FINAL AWARD

This Final Award resolves all issues submitted for decision in this arbitration. The undersigned has considered and resolved all the issues and arguments raised relating to the merits of the claims, counterclaims, requests for attorney's fees, costs, expenses, and pre-judgement interest, including those not explicitly addressed herein. Any argument not addressed in this Final Award was found to be unavailing, without merit, academic, or unnecessary to reach.

This Final Award finds and orders as follows:

1. Claimants have proven breaches of the LLCA and the covenant of good faith and fair dealing and established that Eletson exercised the purchase option pursuant to the BOL, and are therefore entitled to the declaratory relief, compensatory damages, punitive damages, prejudgment interest, and attorney's fees, as set forth below.

2. Respondent has not proven any of its counterclaims and they are dismissed. Respondent is entitled to recover nothing from the Claimants.

A. <u>Declaratory Relief</u>

I hereby enter the following findings, determinations, and declarations:

1. Eletson effectively exercised the buyout option granted in the Binding Offer Letter dated February 22, 2022 on and as of March 11, 2022, and any alleged precondition to the exercise of that option was either satisfied or waived.

2. As of March 11, 2022, Respondent Levona had no membership interest in the Company, Eletson Gas.

3. The Company exercised its rights under the BOL to nominate three entities—Fentalon, Apargo, and Desimusco, (the Preferred Nominees)—affiliated with the

principals of Claimants, as the parties to receive the preferred interests in the Company, previously held by Levona.

4. The preferred interests in the Company were transferred to the Preferred Nominees, effective as of March 11, 2022, and the Preferred Nominees are permitted transferees under the LLCA. They have stipulated to be bound by this Award and any Judgment entered hereon.

5. Eletson Holdings and Eletson Corporation never held any of the preferred interests in the Company.

6. The shares of the subsidiaries which control the Symi and Telendos were transferred to Levona as of March 11, 2022 as the Purchase Option Consideration in connection with the BOL. Since March 11, 2022, Levona retains all rights associated with ownership of the subsidiaries of those vessels.

7. The Status Quo Injunction shall stay in effect until the later of the final court judgment being entered on any Award or any further order of this Arbitrator.

8. Levona, Murchinson, and Pach Shemen, are each alter egos of the other concerning every fact proven in this matter and every item of relief awarded herein. Any references to Levona herein are therefore to all the alter-egos and for the avoidance of doubt, any judgments against Levona are also against each alter-ego.

9. Levona breached its LLCA and related obligations, including without limitation common law and contractual duties to Claimants and the Company, in at least the following ways:

i. Bribing an Eletson Corporation employee, and Company representative, Peter Kanelos, and causing him to disclose the Company's confidential information;

ii. Violating confidentiality obligations by disclosing the Company's confidential information to third parties, failing to take steps to recover such information, and then deceiving Claimants and the Company concerning said breaches after it became a member of the Company;

iii. actively engaging in unlawful behavior by wrongfully influencing Company financiers to turn against the Company and Claimants, including without limitation by causing the arrest of five of the Company's vessels and not disclosing this misconduct to Eletson or the Company after it became a member of the Company;

iv. Failing to acknowledge that Eletson fully complied with the terms of the BOL Purchase Option, and failing to act in good faith by remaining silent about its purported belief that the Company would or might fail to meet its BOL terms;

v. Improperly purporting to act on behalf of the Company in its business dealings with third parties, including by attempting to sell the Company's assets to its primary competitor, Unigas, and concealing such misconduct from Claimants;

vi. Improperly threatening Eletson and affiliated officers and directors, including by pursuing litigation against them;

vii. Improperly purporting to seize control of the Company's board of directors post-March 11, 2022;

viii. Improperly purporting to direct the day-to-day operations of the Company post-March 11, 2022;

ix. Improperly purporting to assert control over the assets of the Company post March 11, 2022;

x. Improperly purporting to call and hold meetings of the Board of the Company without following proper procedures and for unlawful and improper purposes of approving unlawful and improper conduct post March 11, 2022;

xi. Breaching its obligations under the LLCA, including without limitation by purporting to terminate management agreements that Eletson Corporation has with the Company's subsidiaries, purporting to change management of the Company's subsidiaries, precluding Eletson Corporation from communicating with the Company's financiers, all of which Levona knew was unlawful and in breach of the LLCA; and

10. Violating this arbitration's Status Quo Injunction by:

i. Wrongfully declaring the Company in default of the loan from Levona and wrongfully purporting to accelerate payment of the principal;

ii. Trying to sell vessels, including the Symi and Telendos, while the Status Quo Injunction was in effect; and

iii. Directing and/or causing Levona's affiliates to purchase a controlling position in securities of Eletson Holdings in January 2023 for the purpose of wrongfully commencing and then actually causing the commencement of litigation

against Eletson Holdings and the filing an involuntary bankruptcy petition against Eletson Holdings.

B. Compensatory Damages

Levona, Murchinson and Pach Shemen, as alter-egos, jointly and severally, shall pay $43,455,122.21 in compensatory damages as follows:

1. $21,777,378.50, to be paid to Eletson Gas, as compensatory damages for the improper arrests of Eletson Gas vessels, which includes prejudgment interest at a rate of 10% from the date of the arrests (or approximate date the expenses were incurred) through January 2023;

2. $19,677,743.71, to be paid to the Preferred Nominees, constituting the lost profits (EBITDA) due to Levona's unjust enrichment arising from available use of the Symi and Telendos since March 11, 2022, without the reciprocal transfer of the preferred interests, which includes pre-judgment interest through January 2023;

3. $2,000,000 to be paid to Eletson Gas, as compensatory damages arising out of Levona's other breaches of contract, with prejudgment interest at 10% from the date of this Corrected Interim Award until the earlier of the payment of either this award or confirmation in a court of competent jurisdiction of this award.

4. The entities referred to in B.1 and B.2 respectively shall also be awarded pre-judgment interest on the principal amount of the compensatory damages in paragraph B.1. above, (damages for improper arrests), and paragraph B.2. above (damages for lost profits due to Levona's unjust enrichment) at a rate of 10% running from January 30, 2023 through the earlier of either the payment of the award or confirmation of the award in a court of competent jurisdiction.

C. Punitive Damages

Levona, Murchinson and Pach Shemen, as alter-egos, jointly and severally, shall pay punitive damages in the total amount of $43,455,122.21, as follows:

1. $23,777,378.50, to be paid to Eletson Gas; and

2. $19,677,743.71 to be paid to the Preferred Nominees.

D. Attorney's Fees, Costs, Expenses and Additional Interest

Levona, Murchinson and Pach Shemen, as alter-egos, jointly and severally, shall pay:

1. Attorney's fees, costs, and expenses to Claimants incurred to date in connection with this arbitration, the Bondholder Litigation, and the Bankruptcy pursuant to the LLCA Section 12.14(d) and JAMS Rule 24(g), as follows:

i. Attorneys' fees, costs, and expenses due in connection with this arbitration in the amount of $9,590,222.99.

ii. An additional amount of $22,366.10 representing additional JAMS costs incurred in this arbitration since the filing of Eletson's Opening Affirmation, and which Eletson has paid both its share and covered Respondent's share.

iii. Attorneys' fees, costs and expenses due in connection with the Bankruptcy and Bondholder Litigation in the amount of $3,007,266.20;

2. Additional pre-judgment interest on the compensatory damages as awarded in the Corrected Interim Award through August 31, 2023, in the amount of $2,496,081.88, to be paid as follows:

i. To Eletson Gas: $1,319,163.14.

ii. To the Preferred Nominees: $1,176,918.74.

3. Additional prejudgment interest on compensatory damages running from August 31, 2023 until the earlier of the date of payment of the amount due or the date of confirmation of this Final Award by a court of competent jurisdiction calculated by using the formula set forth above in this Final Award; and

4. Additional prejudgment interest on any fees, costs and expenses that have been awarded in this Final Award running from the date of this Final Award until the earlier of the date of payment of the amounts due or the date of confirmation of this Final Award by a court of competent jurisdiction calculated by using the formula set forth above in this Final Award.

The foregoing constitutes the Final Award in this arbitration.

Any other relief requested is hereby denied.

Dated: New York, NY
September 29, 2023

Hon. Ariel E. Belen (Ret.)
JAMS Arbitrator

Affirmation

State of New York)
:ss:
County of New York)

I, Hon. Ariel E. Belen (Ret.), do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my Final Award in this arbitration.

Dated: New York, New York
September 29, 2023

AEBelen

Hon. Ariel E. Belen (Ret.)
JAMS Arbitrator

EXHIBIT B

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 02/09/2024

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ELETSON HOLDINGS, INC. and ELETSON CORPORATION, Petitioners, -v- LEVONA HOLDINGS LTD., Respondent.	23-cv-7331 (LJL) OPINION AND ORDER

LEWIS J. LIMAN, United States District Judge:

Petitioners Eletson Holdings Inc. ("Holdings") and Eletson Corporation ("Corp" and, together with Holdings, "Eletson" or "Petitioners"), apply for an Order confirming a final arbitration award (the "Award") issued by the Honorable Ariel Belen of the Judicial Arbitration and Mediation Services, Inc. ("JAMS") on September 29, 2023. Dkt. No. 62. Respondent and Cross-Petitioner Levona Holdings, Ltd. ("Levona" or "Respondent"), moves: (1) for an Order, pursuant to Federal Rule of Civil Procedure 12(b)(1), dismissing the petition to confirm the Award; (2) for an Order, pursuant to 9 U.S.C. § 10, vacating the corrected interim award dated August 15, 2023 (the "Corrected Interim Award") and the Award; and (3) for an Order, pursuant to 9 U.S.C. § 9, 9 U.S.C. § 207, and/or Article V of the New York Convention, denying the petition to confirm the Award. Dkt. No. 49.

BACKGROUND

The following facts are drawn from the Amended and Supplemental Petition to Recognize and Enforce the Arbitral Award ("Amended Petition"), Dkt. No. 62, the Award, Dkt.

No. 67-58, and the parties' statements of material fact pursuant to Federal Rule of Civil Procedure 56.1, Dkt. Nos. 65, 66. The facts are undisputed except as otherwise stated.

I. The Relevant Parties

This dispute relates to corporate control over non-party Eletson Gas LLC ("Eletson Gas" or the "Company"). Eletson Gas, formed in 2013 under the laws of the Republic of the Marshall Islands, is a limited liability company that specializes in liquified petroleum gas ("LPG") shipping. Dkt. No. 67-58 at 5; Dkt. No. 62 ¶ 2. The present dispute centers on whether Respondent Levona violated its agreements with and obligations to Petitioners Holdings and Corp, a question which turns in part on whether an option to purchase the preferred shares of Eletson Gas was effectively exercised by Holdings.

Eletson—both Petitioners Holdings and Corp—is an international shipping group owned by three principal families: the families of non-parties Laskarina Karastamati, Vassilis Kertsikoff, and Vasilis Hadjieleftheriadis. Dkt. No. 67-58 at 5. Both Holdings, the parent company, as well as its subsidiary, Corp, are corporations formed under the laws of Liberia. Dkt. No. 62 ¶ 2. Holdings owns the common shares of the Company. *Id.* Corp provides management services for vessels owned directly or indirectly by Eletson Gas in exchange for a management fee.

Respondent Levona is a special purpose entity formed under the laws of the British Virgin Islands on October 20, 2021. *Id.* ¶ 3. Levona is a subsidiary of two hedge funds, Nomis Bay and BPY, that have both engaged the same alternative management company Murchinson Ltd. ("Murchinson") to act as their investment sub-advisor. *Id.*; Dkt. No. 50 at 7 n.2.

II. The Joint Venture

As noted, this case arises from a dispute over the ownership of the preferred shares in the Company, and thereby the control over the Company's decision making and assets. The

Company has historically owned a large fleet of medium and long-range product tankers and has been a leader in the transportation of oil products and gas cargoes. Dkt. No. 67-58 at 6. At the time that the events giving rise to this case occurred, the Company owned and operated fourteen LPG vessels, making its fleet the second largest on the market, second only to Unigas, the Company's primary competitor. *Id.*

The Company was formed in 2013 as a joint venture by Holdings and funds managed by Blackstone Tactical Opportunities ("Blackstone"). *Id.* at 5. At the outset of the joint venture, Holdings, which contributed equity interests in five medium-sized LPG vessels to the enterprise,[1] held (and still retains at present) the common stock in the Company, while the Blackstone funds, which contributed capital, held the preferred shares. *Id.*; Dkt. No. 67-50 ¶¶ 91–92. Over the following few years, the Company was plagued by financial problems, defaulting on several loans. Eventually, in November 2021, Blackstone sold its interest in the Company to Levona, making Levona the owner of the preferred shares previously held by Blackstone. Dkt. No. 67-58 at 7.

Several agreements are relevant to this dispute. The first is the Third Amended and Restated LLC Agreement ("LLCA"), which became effective August 16, 2019, and governs the relationship among the holders of membership interests in the Company and contains the arbitration provision that Eletson invoked in the arbitration at issue here. *Id.* at 6. The original parties to the LLCA were the Company, Holdings (the common shareholder of the Company), Corp (the manager of the fleet of the Company's ships), and Blackstone (which held the preferred shares in the Company through a number of different funds it managed, all of which

[1] The vessels were the Anafi, the Nisyros, the Symi II ("Symi"), the Telendos II ("Telendos"), and the Tilos. Dkt. No. 31-1 at 84. Eletson later contributed capital to the venture as well.

were parties to the LLCA). Dkt. No. 67-2 at 1–2. When Blackstone sold its interest in the preferred shares (the "Preferred Interests") to Levona in November 2021, Levona replaced Blackstone as party to the LLCA, and signed a Joinder Agreement to that effect, agreeing to be fully bound by and subject to the provisions of the LLCA. *See* Dkt. No. 67-4.

The LLCA confers on the parties certain rights and obligations. As relevant to this dispute, the LLCA gave the holder of the Preferred Interests the power to designate three of five members of the Company's Board of Directors. Dkt. No. 67-2 § 3.3. Because the Board of Directors had "the sole right to manage and control the business, operations and affairs of the Company and to do any and all acts on behalf of the Company that are necessary, advisable or convenient to the discharge of its duties," *id.* § 3.1, the LLCA affords the holder of the Preferred Interests managerial control over the Company. Even so, ownership of the Preferred Interests did not guarantee total control over the Company; the LLCA requires the approval of four Directors—one more Director than the holder of the Preferred Interests has the power to select—to undertake any "Fundamental Action," including the acquisition or disposition of any vessels or any assets worth more than $1,000,000. *Id.* § 3.2; *id.* Schedule VI. The LLCA also gives the holder of the Preferred Interests the right to the vast majority of the profits of the Company. When Levona purchased the preferred stock from Blackstone in November 2021, it inherited these rights.

The LLCA also contained a mandatory arbitration provision. Section 12.14(a) provides as follows:

> Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof (including the determination of the scope or applicability of this agreement to arbitrate) shall be determined by arbitration in New York County in the State of New York or any other mutually agreeable location, before a single arbitrator. The arbitrator shall be selected by agreement of the parties. If the parties are unable to agree on an

> arbitrator within 15 days after the demand for arbitration is made, JAMS shall designated the arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The Federal Arbitration Act shall govern the interpretation and enforcement of such arbitration proceeding. The arbitrator shall apply the Law of the State of Delaware and the Republic of the Marshall Islands, as the case may be, in accordance with Section 12.13.[2]

Dkt. No. 67-2 § 12.14(a). Arbitration was designated as the "exclusive and binding method" for resolving any such dispute. *Id.* § 12.14(b). But the Company's financial problems continued despite the LLCA and the Company's new management. By early 2022, five of the Company's ships—over a third of its fleet—had been arrested by various creditors for non-payment of the Company's liabilities. Dkt. No. 67-58 at 54. Multiple arrested ships were scheduled to be sold at auction to compensate creditors.

Three days before the auction was set to proceed, however, Holdings, Corp, the Company, and a wholly-owned subsidiary of the Company, entered into the second agreement with Levona that is relevant to this dispute—the Binding Offer Letter ("BOL")—on February 22, 2022, which, through a desperately-needed infusion of cash in the form of a loan from Levona, enabled the Company to avoid losing most of its fleet. Dkt. No. 67-10. Pursuant to the BOL, the Company agreed to transfer two of its ships to Levona, in exchange for Levona lending up to $10,000,000 to the Company, and granting the Company a limited option to buy Levona out of the Preferred Interests, which would have the effect of terminating Levona's ownership and control of the Company. *Id.* Because it has some relevance to the dispute, the Court describes the terms of the BOL in some detail. The BOL sets forth the terms and conditions pursuant to

[2] Section 12.13 provides that "[t]o the fullest extent permitted under the laws of the Republic of the Marshall Islands, [the LLCA] and the rights and obligations of the parties [t]hereunder shall be governed and construed and enforced in accordance with the laws of the state of Delaware for agreements made and to be performed wholly within that jurisdiction." Dkt. No. 67-2 § 12.13. To the extent that the laws of the Marshall Islands did not permit application of Delaware law, Section 12.13 provides that the law of the Marshall Islands governs. *Id.*

which Levona was "willing to (A) buy the shares and/or membership interests of" two of the Company's vessels, the Symi and Telendos, "from [the Company] in consideration of advancing a purchase option to [the Company] and Eletson Holdings . . . ; [and] (B) advance a US$10,000,000 senior loan to [the Company] . . . ." *Id.* With respect to the purchase of the Symi and the Telendos, the BOL states that "Levona shall buy all of the Shares in the Companies held by [the Company] . . . in consideration of the grant to [the Company] and [Corp] of the purchase option set out in Clause 2" of the BOL. *Id.* § 1.1.

The BOL then goes on to provide the terms and conditions of both the loan and the option to purchase the Preferred Interests from Levona (the "Purchase Option"). Clause Four, which addresses the loan and Assignment, provides that "[c]oncurrently with the Transfer [of the Company's interests in the Symi and the Telendos to Levona], Levona shall enter into a loan agreement . . . for the advance of a loan facility to [the Company] of an amount of US$10,000,000" to be "used as mutually agreed upon between Levona and [the Company] for various refinancing and sources and uses." *Id.* § 4.1. This loan, the BOL provided, was senior to all liabilities of the Company "save for such secured debts of [the Company] as Levona may agree in their sole discretion may remain senior to the loan." *Id.* And, concurrent with the transfer of the interests in the vessels and entry into the loan agreement, the parties agreed that Corp and the Company's subsidiary would assign any claims they had against the Company to Levona until the full amount of the loan was paid back. *Id.* §§ 4.3, 4.4. The BOL further states that the loan terms are to also include: (1) a maturity date of two years from the date of the first drawdown; (2) an interest rate of 10% per annum compounded monthly; and (3) priority on any excess cash flow. *Id.* § 4.2.

Clauses Two and Three of the BOL address the Purchase Option and the consideration for the Purchase Option ("Purchase Option Consideration"), respectively. Clause Two outlines the parameters under which the Company could buy out the Preferred Interests. It states that, "[s]ubject to and in consideration of the Transfer [of shares in the Symi and the Telendos] occurring and the conditions set out in Clause 2.2 and 2.3, Levona hereby grants to [the Company] . . . the option, exercisable by written notice to Levona . . . , for either [the Company] or its nominee to purchase all of the membership interests held by Levona in [the Company] . . . for a consideration equal to the Purchase Option Consideration" detailed in Clause Three. *Id.* § 2.1. However, the BOL sets conditions upon how and when this Purchase Option could be exercised. Clause 2.2 states that the Company "shall only be entitled to serve an Option Notice after either: (a) the Loan and any Interest accrued thereon is fully repaid; or (b) adequate security and/or collateral is provided for the Loan (the adequacy of such security being at the sole discretion of Levona)." *Id.* § 2.2. Clause 2.3 limits the amount of time the relevant parties had to exercise the purchase option. "[A]n Option Notice may only be served within 30 days from the date of [the BOL] ('the Purchase Option Period')." *Id.* § 2.3. The Purchase Option Period could be extended, but only if the loan was at least partially repaid. *Id.* §§ 2.4, 2.5. Under Clause 2.3, "[i]f no Option Notice is validly served by the expiry of such Purchase Option Period, . . . the purchase option shall lapse." *Id.* § 2.3.

Clause Three of the BOL sets forth the formula and methodology for calculating the Purchase Option Consideration. The Purchase Option Consideration is stated to be an amount equal to "$1 plus an amount equal to US$23,000,000 less the Net Value," where the "Net Value" is equivalent to the value of the Symi and the Telendos as determined by an independent valuation. *Id.* §§ 3.2, 3.3. In essence, if the value of the two vessels is less than $23,000,000, the

Company—to exercise the option to buy out Levona's Preferred Interests—must true up the difference to Levona so that the total value of consideration paid to Levona (including the value of the vessels) equals $23,000,000. If the "Net Value" exceeds $23,000,000 (*i.e.*, if the value of the vessels is greater than $23,000,000), then the excess benefits the Company and is applied to reduce the amount outstanding on Levona's loan to the Company.

The BOL also conditioned the loan on an agreement from the Company, Corp, and Holdings that from the last date of the period during which the Purchase Option could be exercised, they would cooperate and vote in favor of any Fundamental Action proposed by Levona. *Id.* § 4.2(d).

Importantly, the BOL links the loan and the Purchase Option. The Company could only exercise the Purchase Option if Levona was repaid the loan and interest in full, or if Levona received, in its sole discretion, "adequate security and/or collateral . . . for the Loan." *Id.* § 2.2(b). If the Company repaid the loan and interest or provided such adequate security and/or collateral, it was entitled to exercise the Purchase Option and buy the Preferred Interests from Levona, subject only to truing up the value of the ships (the Symi and the Telendos) to $23,000,000. But if the Company could not repay the loan and interest or provide such adequate security, then it did not have the option of buying the Preferred Interests from Levona. In that situation, Levona, as consideration for the unexercised option, would retain the Preferred Interests and the attendant control over the Company, as well as its interests in the Symi and the Telendos.

Like the LLCA, the BOL contained a provision stipulating to the applicable law that would be used to adjudicate disputes, as well as a mandatory arbitration provision. But the law to be applied, as well as the terms of where and how any arbitration would occur, were different

from those set forth in the LLCA. Arbitration to resolve disputes arising from the BOL was to proceed as follows:

> This Letter and the negotiations between the parties in connection with the contents hereof, including but not limited to the proposed purchase of the Shares, grant of the Purchase Option and advance of the Loan and any disputes and claims arising out of or in connection with them and their formation (including non-contractual claims and disputes), shall be governed by and construed in accordance with English law and shall finally be resolved by arbitration in accordance with the rules of arbitration of the London International Centre for Arbitration applicable at the time of conclusion of this letter (the "Rules") by one arbitrator to be appointed in accordance with the Rules. The seat of the arbitration shall be London, United Kingdom. The language to be used in the arbitral proceedings shall be the English language.

Id. § 10. The mandatory arbitration provision in the BOL did not supersede the mandatory arbitration provision in the LLCA.

In short, the BOL provided that Levona would be provided $23,000,000 (partially in the form of the two ships), in exchange for a loan of $10,000,000 and, if that loan and any interest accrued on it was repaid, or if adequate security or collateral was provided to Levona, the Company could exercise an option to buy out Levona's stake in the Company by acquiring the Preferred Interests.

On March 11, 2022, Levona and the Company executed a series of contracts to give effect to the terms outlined in the BOL (the "Transaction Documents"). Pursuant to the agreement contemplated in the BOL to transfer two Company vessels to Levona, the parties executed the Share Transfer Agreement ("STA"). Dkt. No. 67-12. The STA provided that the Company would sell its interests in the Symi and the Telendos vessels and that "[t]he consideration for the sale and purchase of the Shares [in the vessels] shall be as set out in the [BOL]." *Id.* § 3.1. It contained an integration clause providing that the STA "together with the [BOL] constitutes the entire agreement between the Parties regarding the sale and purchase of the Shares [in the vessels] and related matters." *Id.* § 7.1.

The same day, the parties also executed several other agreements to effectuate the terms contemplated by the BOL. The parties entered into an Intra-Group Loan Agreement, pursuant to which Levona provided to the Company a loan facility of up to $10,000,000 for a term of up to two years. Dkt. No. 67-58 at 8. The parties agreed, through a Fundamental Action Letter, that while the loan was outstanding, Eletson would "[c]o-operate with any Fundamental Action . . . proposed by Levona." Dkt. No. 55-4 at 15. Before the parties entered into the Fundamental Action Letter, "Fundamental Actions" as defined in the LLCA—including the Company's acquisition and disposition of vessels and other assets worth more than $1,000,000—were the only acts over which Levona could not already exercise complete control as the holder of the Preferred Interests. By providing that Eletson would cooperate with "Fundamental Actions" that Levona wanted to take, the Fundamental Action Letter transferred virtually unfettered control over the Company's affairs to Levona. The parties also entered into an Assignment of Claims agreement, as contemplated by the BOL, pursuant to which Corp assigned to Levona all of its claims against the Company and any of its vessels. Dkt. No. 67-58 at 9. Relatedly, the parties entered into a Deed of Waiver and Release, pursuant to which specified outstanding claims against the Symi and Telendos were released by certain Eletson entities.

On the same day that the parties executed the Transaction Documents, March 11, 2022, the Board of Directors of the Company unanimously approved the STA, the Loan Agreement, and the Fundamental Action Letter in a written memorandum ("Written Consent"). Dkt. No. 67-13. The Written Consent summarized the terms of the BOL with respect to the sale of two of the Company's vessels to Levona "in consideration of the grant of a purchase option to the Company over the shares held by Levona in the Company," and with respect to the "fixed term unsecured loan facility advanced by Levona to the Company of []$10,000,000." *Id.* The Written Consent

ratified the BOL and all of the ancillary contracts, and authorized the Eletson Directors on the board to sign, execute, and deliver the STA and the Loan Agreement on behalf of the Company. *Id.* at 2.

After signing the Transaction Documents, the Company and Levona continued to work in concert to navigate the Company's financial challenges. Dkt. No. 67-48 at 38. A March 9, 2022 cash forecast prepared by the CFO of Corp, Peter Kanelos, projected that the Company would be out of cash by April 7, 2022, and again by April 12, 2022. *Id.* In light of this projection, the parties amended the loan to increase the amount available to the Company to $14,000,000. Dkt. No. 67-58 at 9.

The parties dispute the effect of these agreements and specifically whether they constitute an exercise of the Purchase Option, and thus whether the Company bought out Levona's Preferred Interests in the Company. Holdings and Corp contended in the arbitral proceedings that these contracts satisfied the Purchase Option and effectuated the Company's purchase of the Preferred Interest from Levona, and thus nullified Levona's membership interest in the Company. Dkt. No. 67-24 at 13–14. Accordingly, Petitioners argued, Levona's later attempt to sell some of the Company's assets was improper, because Levona, having allegedly sold off the Preferred Interests, no longer had the authority to control the Company or its assets. *Id.* at 14. In response, Levona contended that the transfer of the ownership shares of the vessels was consideration for the Purchase Option, but did not itself constitute an exercise of the Purchase Option. Dkt. No. 67-17 at 8. If the conditions for exercise of the Purchase Option were not satisfied, Levona would retain the Preferred Interests *and* retain the ownership shares of the vessels. Pointing to the lack of a written notice to exercise the Purchase Option, and lack of repayment of any portion of the Loan, Levona contended that the Company never exercised the

Purchase Option and thus that Levona properly retained managerial control over the Company. *Id.*

About four months after the Transaction Documents were executed, on July 15, 2022, Levona—purporting to act on behalf of the Company—signed a non-binding Letter of Intent with Unigas (the "Unigas LOI")—the Company's primary competitor—to sell Unigas nine of the Company's twelve remaining vessels for $262,000,000. Dkt. No. 67-58 at 9. The two Eletson representatives on the Company's Board of Directors were not consulted before the Unigas LOI was signed, and were only informed of the agreement when a Levona representative sent the Unigas LOI to the Company's Board of Directors via email and directed them to accept its terms. Dkt. No. 67-24 at 16. Less than one week later, on July 21, 2022, one of the Levona representatives on the Board of Directors circulated notice for a Company Board Meeting to be held on July 26, 2022. *Id.* The Eletson representatives on the Board of Directors responded that the notice of the meeting was deficient for several reasons, such as the fact that the notice of the meeting did not specify the purpose of the meeting. *Id.* at 17. The Levona-appointed representative then circulated a new notice for a meeting of the Board of Directors of the Company to be held on July 28, 2022, and this time included a statement of the purpose of the meeting, which included certain actions to be taken in furtherance of the Unigas LOI. *Id.* After the Eletson Directors again responded that the notice was deficient and that they would not attend the meeting, the Levona directors stated that the meeting would nevertheless proceed, and ultimately held the meeting. *Id.*

III. The Commencement of the Arbitration and Jurisdictional Issues

On July 29, 2022, Holdings and Corp submitted a statement of claims and demand for arbitration against Levona in New York pursuant to the mandatory arbitration provision of the LLCA. Dkt. No. 67-16; Dkt. No. 65 ¶ 40; Dkt. No. 66 ¶ 40. Petitioners alleged that Respondent

breached the LLCA "and its express and implied duties thereunder" by, *inter alia*, purporting to act on behalf of the Company and in that capacity "actively trying to strip the Company of substantially all of its assets for less . . . than fair market value and for [Respondent's] selfish and personal gain." Dkt. No. 67-16 at 2. In particular, Petitioners alleged that Respondent granted the Company and Corp the Purchase Option, *id.* ¶ 13, that the Company had exercised the Purchase Option and effectuated the buy-out of the Preferred Interests, *id.,* that Respondent accordingly had no power or authority to act on behalf of the Company, *id.*, and that notwithstanding its absence of authority, and in violation of its duties under the LLCA, Respondent had attempted to effect a sale of nine of the Company's twelve vessels at fire-sale prices, *id.* ¶¶ 18–20. Eletson also included in its statement of claims its allegations that the Eletson-appointed Directors on the Company's Board had refused to sign off on the sale of nine of its twelve vessels, and that Respondent had improperly purported to call a meeting of the Company's Board of Directors to circumvent the Eletson-appointed Directors. *Id.* ¶¶ 21–29. Among other relief, Petitioners sought "[a] declaration that [Petitioners] have complied with all obligations necessary to complete the buyout purchase option and that the option has been executed," and injunctive relief against Respondent continuing to act on behalf of the Company. *Id.* at 8. Petitioners also sought an award of "[c]ompensatory damages for all the harm caused to the Company and/or Claimants by reason of Levona's misconduct," as well as punitive damages. *Id.* at 8–9. On August 16, 2022, pursuant to the LLCA, JAMS appointed Justice Belen to act as sole arbitrator of the dispute. Dkt. No. 62 ¶ 12.

On August 19, 2022, Levona filed its Response to the Statement of Claims and Statement of Counterclaims. *Id.* ¶ 13; Dkt. No. 67-17. Levona contested the jurisdiction of the arbitrator on the ground that the LLCA arbitration provision that Petitioners invoked—which provided for

arbitration in New York under the laws of the Marshall Islands and Delaware—could not control the parties' dispute, which, Levona contended, arose from the BOL. Dkt. No. 67-17 ¶ 1. It contended that the "crux" of the matter—the issue which underpinned all of Eletson's claims—was whether the Company had exercised the Purchase Option as provided for in the BOL, and thus that the dispute could only be resolved by an adjudication of the BOL in London under English law pursuant to the BOL's arbitration provision. *Id.* ¶¶ 1, 2. Levona also asserted counterclaims. It asserted that Eletson (both Holdings and Corp) had mismanaged the Company and failed to take care of its needs in violation of its obligations under the LLCA, the BOL, and the Loan Agreement. *Id.* ¶¶ 24–28. Specifically, Levona alleged that Eletson had breached the provision of the BOL requiring it to agree to Fundamental Actions directed by Levona as long as the loan remained outstanding. *Id.* ¶ 25. It alleged, as an example of Eletson's management failures, that Eletson had prevented the financier responsible for the March 2022 refinancing of selected LPG vessels from placing a mortgage on five of the vessels as desired, resulting in an increase in the interest margin rate and higher interest payments. *Id.* ¶ 28. It also alleged that Eletson had interfered with Levona's sale of the Symi and Telendos vessels, which Levona had acquired pursuant to the STA. *Id.* ¶¶ 29–34. And finally, Levona alleged that, as the sole holder of the Preferred Interests and pursuant to the LLCA and the Fundamental Action Letter, it had the right to sign the Unigas LOI and that Eletson had interfered with Levona's efforts to make the sale on behalf of the Company. *Id.* ¶¶ 35–41. Levona sought an order requiring Eletson agents to vacate the Symi and Telendos, declaratory judgment that the Purchase Option was not exercised, declaratory judgment that it retained the Preferred Interests, declaratory judgment that it was authorized to execute the Unigas LOI, and "[c]ompensatory damages for all the harm

caused and continuing to be caused to the Company and Levona by way of [Petitioners'] mismanagement, breach of contracts, and tortious behavior." Dkt. No. 67-17 ¶ 48.

On September 12, 2022, Levona moved to strike Eletson's claims, asserting that the claims were not within the jurisdiction of JAMS as it had in its initial response. Dkt. No. 67-18 at 3. On September 30, 2022, Justice Belen issued an order denying Levona's motion, holding that "the arbitration provision in the [LLCA] is broad, encompasses the claims asserted, and the parties agree that this arbitration provision was not replaced or superseded by the arbitration [provision] in the Transaction Documents." *Id.* at 12. Justice Belen also found that Levona had waived its jurisdictional challenges when it availed itself of the JAMS forum by filing counterclaims. *Id.*

On October 10, 2022, Justice Belen issued a temporary restraining order ("TRO") providing that, during its pendency, "the parties hereto shall maintain the status quo and shall not, among other things: (1) engage in the transfer or sale of any assets of [the Company] . . . absent the joint written consent of the parties"; or "(2) notice or conduct of any board meetings for the purposes of proposing or considering transfer or sale of any assets of the Company." Dkt. No. 67-58 at 13–14.[3] On November 7, 2022, Justice Belen issued an order rejecting Levona's argument that the TRO did not apply to "the sale of the Symi and Telendos" because those vessels were no longer assets of the Company, having been transferred to Levona pursuant to the STA. The arbitrator held that "[a]ny attempt to sell or otherwise transfer the Symi and Telendos vessels will be deemed to be in violation of the TRO." *Id.* at 14.

[3] The LLCA empowers the arbitrator to grant injunctive relief. It states, in relevant part, that "[t]he parties agree that the arbitrator shall have authority to grant injunctive or other forms of equitable relief (including, without limitation, a temporary restraining order or preliminary injunction) to any party . . . to preserve such party's rights pending a final resolution on the merits." Dkt. No. 67-2 § 12.14(c).

On October 25, 2022, Eletson moved for a preliminary injunction, extending the TRO through the conclusion of the arbitration proceedings. Dkt. No. 31-20. In its application, it complained that Levona was attempting to sell the Symi and Telendos and to continue its efforts to sell the nine vessels to Unigas. *Id.* Levona cross-moved for injunctive relief, seeking an order requiring Eletson to comply with any directive provided to Eletson by Levona related to the Symi and Telendos and to cooperate in due diligence with respect to the sale of the nine vessels to Unigas. On January 12, 2023, the arbitrator issued a decision on the parties' cross-motions for preliminary injunctions and entered a preliminary injunction ("Status Quo Injunction") extending the TRO's prohibition on actions altering the status quo until further notice. Dkt. No. 67-58 at 14. The preliminary injunction stated that:

> The parties hereto shall maintain the status quo and shall not, among other things: (a) engage in the transfer or sale of, or attempt to sell or otherwise transfer, any assets of [the Company] . . . or assets in dispute in this arbitration, absent the joint written consent of the parties, which shall be sent to the undersigned Arbitrator, or (2) notice or conduct of any board meeting for the purpose of proposing or considering the transfer or sale of any assets of the Company or other assets in dispute in this arbitration.

Id.

On December 31, 2022, Eletson filed a Third Amended Statement of Claims and Response to Counterclaims. Dkt. No. 67-24. In its claims, Eletson sought a determination that Levona *never* had any lawful interests in the Company, that the assignment of the two entities owning Company vessels to Levona was procured by coercion, fraud, illegal, and other wrongdoing and is null and void, and that Levona not be considered an interest holder of the Company, or, in the alternative, specific performance of the Company's buy-out of Levona's Preferred Interests. *Id.* at 4. Eletson also sought compensatory and punitive damages and attorneys' fees. *Id.*; *see also id.* at 22–24. In particular, Eletson sought "compensatory damages

for all the harm caused to the Company and/or Claimants by reason of Levona's misconduct." *Id.* at 22.[4]

IV. The Debt Holder Litigation, Holdings' Bankruptcy and Related Arbitration Developments

On or about January 4, 2023, an affiliate under common ownership with Levona—Pach Shemen—purchased $183,851,546 in bonds of Holdings for $2,000,000, with an agreement that it would pay an additional $500,000 if the arbitration ended to Levona's satisfaction such that it was able to exercise its rights as holder of the Preferred Interests to sell the Company or its vessels. Dkt. No. 67-58 at 60. Thereafter, on January 11, 2023, Pach Shemen instructed the bond trustee, Wilmington Savings Fund Society, to sue Holdings to collect the debt due on the bonds. *Id*. Accordingly, that same day, a complaint was filed in this District by Wilmington Savings Fund Society, FSB against Holdings and two related entities (the "Bondholder Litigation"), alleging that the defendants had failed to make required quarterly interest payments on April 15, 2019 and each quarter thereafter, and had failed to repay principal and accrued interest on the maturity date of the bonds in violation of the terms of the notes and the indenture. *Wilmington Sav. Fund Soc'y, FSB v. Eletson Holdings Inc.*, CM-ECF No. 23-cv-261, Dkt. No. 1. On February 2, 2023, and again on March 8, 2023, the court in that case granted letter motions for an extension of time to answer. *Id.* Dkt. Nos. 18, 23. The case has since been stayed. *Id.* Dkt. No. 23.

On March 7, 2023, while the arbitration was pending and after the Bondholder Litigation had been filed, Pach Shemen and two other creditors of Holdings filed involuntary petitions for relief under Section 303 of Title 11 of the Bankruptcy Code, commencing involuntary Chapter 7

[4] On January 27, 2023, Respondent filed a Second Amended Statement of Counterclaims. Dkt. No. 67-25.

proceedings against Holdings and two of its affiliates in the Bankruptcy Court for the Southern District of New York. Dkt. No. 67-30. Levona notified the arbitrator of the bankruptcy proceedings that same day. *Id.* On March 8, Eletson submitted its own letter to the arbitrator, asserting that the automatic stay generated as a result of the involuntary petition against Holdings did not stay any of Eletson's affirmative claims or any of Levona's counterclaims against Corp, and that Eletson intended to move the bankruptcy court to modify the automatic stay so as to permit Levona's counterclaims against Holdings and the arbitration as a whole to move forward. Dkt. No. 67-32. Eletson argued that the arbitration should move forward as scheduled for April 24, 2023. *Id.* It ended its letter to the arbitrator: "[w]e fully preserve all of Claimants' rights, claims, and defenses. Levona's bad-faith bankruptcy filing, like its other bad-faith tactics, is causing Claimants serious harm." *Id.* On March 10, 2023, Eletson sent a second letter to the arbitrator in response to a suggestion by Levona that the arbitration and certain of Levona's deadlines in connection with the arbitration be delayed. Dkt. No. 67-33. Eletson accused Levona's affiliate, Pach Shemen, of procuring the involuntary bankruptcy to disrupt the arbitration and of making false statements to the arbitrator. *Id.* It noted that Levona's affiliate was the largest petitioning creditor in the bankruptcy proceeding, that Levona's designees on the Company's Board had signed the involuntary petition, and that Pach Shemen had acknowledged in the bankruptcy petition that one of its affiliates owned the balance of the equity interests in the Company and was engaged in mandatory arbitration concerning the ownership of the equity interests in the Company. *Id.* Eletson also asserted that Pach Shemen's purchase of the Holdings bonds constituted a violation of the arbitrator's Status Quo Injunction. Referring to a dispute the parties had with respect to documents, it stated: "Your Honor should insist on timely production of documents and expert reports. If Levona does not honor Your Honor's orders,

Claimants reserve the right to seek the most severe sanctions." *Id.* at 1. The same day, the arbitrator stayed the arbitration pending further order of the Bankruptcy Court. Dkt. No. 67-34. In his order, the arbitrator stated: "[Petitioners] argue . . . [that] the filing of the involuntary petition is *arguably* a violation of the status quo injunctive order." *Id.* at 2 (emphasis added).

On April 11, 2023, the petitioning creditors and the debtors in the bankruptcy case submitted a stipulation, which was signed by the Bankruptcy Court on April 17, 2023, permitting the existing claims then pending in the Arbitration to proceed (the "Lift Stay Order"). Dkt. No. 67-35. The relevant provisions are in paragraphs 3 and 4 of the Lift Stay Order:

> 3. The automatic stay under section 362(a) of the Bankruptcy Code is hereby modified with respect to the Arbitration solely to the extent necessary and for the sole purpose of permitting a trial, any related pre-trial proceedings (including any remaining discovery), any related post-trial proceedings or briefing, and a final determination or award to be made by the Arbitrator, including any appeals, with respect to the claims currently pending in the Arbitration . . . . The Arbitration Parties are authorized to provide a copy of this Stipulation and Order to the Arbitrator.
>
> 4. Any Arbitration Award, whether in favor of any Arbitration Party, shall be stayed pending further order of the Bankruptcy Court on a motion noticed following the issuance of the Arbitration Award. For avoidance of doubt, no Arbitration Party shall transfer, dispose of, transact in, hypothecate, encumber, impair or otherwise use any such Arbitration Award or any asset or property related thereto absent a further order of this Court.

Id. at 3–4. The Lift Stay Order recited that the parties to the arbitration were Holdings, Corp, and Levona and defined them as the "Arbitration Parties." *Id.* at 2.

On April 25, 2023, Eletson submitted to the arbitrator what it styled a "Supplemental Notice of Additional Levona Status Quo Injunction Violations." Dkt. No. 67-36. Eletson challenged (1) the filing in this court of the Bondholder Litigation, a claim for breach of contract by the trustee of notes issued by Holdings and two non-party affiliates due to the nonpayment of interest and principal and certain indemnified losses as a bad-faith filing "directed" by the "Levona Parties"; (2) the service of a Notice by that trustee, Wilmington Savings Fund Society,

FSB, terminating a "Restructuring Support Agreement" among the consenting noteholders; and (3) the filing by Pach Shemen and the two other creditors of the involuntary bankruptcy petitions against Holdings and its two non-party affiliates. *Id.* Eletson claimed that the Bondholder Litigation and the related purported termination of the Restructuring Support Agreement, as well as the involuntary bankruptcy petition initiated by Pach Shemen, violated the Status Quo Injunction and caused damages to Eletson generally and the Company specifically. *Id.* at 8–10. Eletson further accused Levona of misleading the arbitrator when it filed a letter to the arbitrator asserting that the arbitration was automatically stayed due to the bankruptcy petition, and that Levona had misled the arbitrator by stating in the letter that "Levona is not responsible for the bankruptcy nor does it own or control any party who filed the involuntary petition." *Id.* at 10. Eletson submitted evidence that Pach Shemen's owners were identical to Levona's owners and that Pach Shemen held itself out as "Levona II," as well as other evidence suggesting a close relationship between the entities. *Id.* at 12. Eletson stated that it intended "to include these violations and seek appropriate relief concerning them in the upcoming pre-hearing submissions and to adduce proof concerning them at the upcoming hearing, seeking such other and further relief as the Arbitrator deems fitting." *Id.* at 2. In the last numbered paragraph of the submission, Eletson took issue with the claim in the bankruptcy proceeding that the Preferred Interests were part of the bankruptcy estate. *Id.* at 16–17 ¶ 47. Eletson stated that:

> [A]s Levona knows, the preferred interests at issue here were, under the BOL, to be transferred to Gas or to a nominee, and, as Levona knows, the preferred interest was transferred at the time of the BOL and the subsequent March 2022 transactions to such nominees. Part of the relief Claimants seek here is confirmation that Levona has no interest in that preferred and that the nominees from Gas do.

Id. This statement was the first time that Eletson asserted in the arbitration that the Preferred Interests were transferred to a nominee. Previously, in an October 25, 2022 affidavit submitted in the arbitration, Eletson claimed that Eletson had exercised the Purchase Option and was the

sole unit holder of the Company. Dkt. No. 67-20 ¶¶ 2, 9. Eletson made the same claim in memoranda of law submitted to the arbitrator on October 25, 2022, November 8, 2022, and November 18, 2022. Dkt. No. 67-21 at 10; Dkt. No. 67-22 at 6; Dkt. No. 67-23 at 11. But Eletson did not, until April 2023, state that the Company had transferred the Preferred Interests to a nominee.

Ultimately, Holdings and the other debtors agreed to convert the bankruptcy case to a voluntary Chapter 11 case, to withdraw a motion they had previously made in the bankruptcy case that the involuntary bankruptcy case had been filed in bad faith, and agreed not to object to the payment of attorneys' fees to the petitioning creditors from the bankruptcy estate in an amount up to $1,500,000. Dkt. No. 65 ¶¶ 132–134. On September 25, 2023, the bankruptcy court converted the involuntary bankruptcy proceeding to a Chapter 11 voluntary bankruptcy case. *Id.* ¶ 135. On November 13, 2023, the bankruptcy court approved an award of $1,500,000 in attorneys' fees that the petitioning creditors, including Pach Shemen, had incurred in filing and prosecuting the involuntary bankruptcy case. *Id.* ¶ 174.

V. The Arbitration Hearing

The arbitration hearing commenced on May 15, 2023. Dkt. No. 67-58 at 19. On May 3, 2023, in advance of the hearing and before the submission of the parties' Pre-Hearing Briefs, the parties stipulated that the schedule for the hearing was "fair and reasonable and waive[d] any objection to the schedule ordered or otherwise determined by the arbitrator." Dkt. No. 67-39 at 4. The parties further stipulated "that each has no challenge or objection to the arbitration on fairness grounds or on the basis that it has not been granted enough time to prepare for or present its case." *Id.* Procedural Order Number 6 identified the parties to the arbitration as those stated in the caption (*i.e.*, Holdings, Corp, and Levona), and the claims as those set forth in the Demand

for Arbitration and the Statement of Claims as well as those in Levona's Response to the Statement of Claims and Counterclaims. *Id.* at 1, 4.

In its Pre-Hearing Brief submitted on May 5, 2023, Eletson asserted that the Preferred Interests were not bought out by the Company but were transferred to nominees chosen by Eletson in March 2022. Dkt. No. 67-38. It stated: "[t]he preferred interests in this arbitration, from their issuance up until the execution of the BOL and even thereafter, were never owned or controlled, directly or indirectly" by Eletson, the Company or "any other entity directly or indirectly affiliated with any of those entities," *id.* ¶ 100, but that "[f]rom January 2022, at the latest," the owners of Eletson had determined to nominate three Cypriot entities (the "Nominees")—each related to the three families who own Eletson—to hold the Preferred Interests, *id.* ¶ 103. Eletson asked that the arbitrator confirm that the Nominees held the Preferred Interests in the Company. *Id.* ¶ 208(ii). Eletson also made a claim for "rescissory damages relating to the transfer of the Symi and Telendos to Levona, including that the proceeds of any sale of the Symi and Telendos and revenue related thereto paid to Claimants/the Company." *Id.* ¶ 50. Further, Eletson sought "punitive and other damages" for Levona's conduct that it alleged violated the Status Quo Injunction. *Id.* ¶ 51.

On May 10, 2023, Levona moved to strike Eletson's allegations that the Preferred Interests had been transferred to the Nominees, or in the alternative to dismiss Eletson's claims in chief. Dkt. No. 67-40. Levona argued that Eletson had improperly alleged that the Preferred Interests had been transferred to the Nominees for the first time on the eve of the hearing, with only specious evidence in support of the allegations, and in complete contradiction of Eletson's

prior assertions about the holders of the Preferred Interests.[5] *Id.* Levona suggested that Eletson had contrived the allegation that the Preferred Interests had been transferred to the Nominees to ensure that the Preferred Interests were not considered part of the bankruptcy estate in the bankruptcy litigation and thereby "avoid the consequences of a negative decision in the Bankruptcy Court." *Id.* at 4. Put differently, on Levona's account, Eletson only suggested that the Preferred Interests had been transferred to the Nominees at such a late stage because Eletson did not have an incentive to make such an assertion until after the bankruptcy proceeding against Holdings had been initiated. *Id.* Prior to the initiation of the bankruptcy proceeding, Holdings could retain the Preferred Interests by winning the arbitration; after the initiation of the bankruptcy proceedings, however, any arbitral award to Holdings would become an asset of the bankruptcy estate, such that if the Preferred Interests were included in the arbitral award, the Preferred Interests would be distributed to Holdings's creditors. *Id.* If the Preferred Interests had been transferred to the Nominees, however, they would remain remote to the creditors in the bankruptcy proceeding. Levona also argued that, if the Cypriot entities were the Nominees, they would be the real parties in interest and would be required to be made parties to the arbitration and that Eletson would not have standing. The arbitrator did not rule on Levona's motion until after the hearing. Dkt. No. 67-58 at 30.

During the eight-day hearing beginning on May 15, 2023, Eletson and Levona presented the testimony of their representatives, expert witnesses, and others. *Id.* ¶ 20. In his opening statement at the arbitration, counsel for Petitioners stated that he wished to address "how we might structure relief here so that it's effective so that we don't wind up going through all this

[5] Levona specifically argued that it would be prejudicial to allow Eletson to introduce documents regarding the transfer without allowing Levona any discovery. Dkt. No. 67-40 at 5.

and your Honor will come to toil and struggle to come to a decision and then Levona and its affiliates will render it nugatory" and sought to prevent Levona from arguing that "even if [Petitioners] win in this proceeding, [the recovery] goes back into Holdings" because "the bankruptcy allows them to take it." Dkt. No. 67-42 at 4–5, 6.

The arbitration hearing continued on May 16, 18, 19, 22, 23, and 24, and the arbitrator heard closing arguments on June 13, 2023, at which point he deemed the record closed. Dkt. No. 65 ¶ 118; Dkt. No. 66 ¶ 118. At the hearing, representatives of the Nominees submitted written testimony in which they stated that Eletson had told Levona that it intended the Preferred Interests to go to the Nominees of the Company and that "[a]ny conclusion by the Tribunal in this Arbitration" would "bind" them. Dkt. No. 67-41 at ¶¶ 101, 103; Dkt. No. 67-43 ¶¶ 194, 196; Dkt. No. 67-45 ¶ 104. At the conclusion of the hearing, the parties consented to a fifteen-day extension of the thirty-day deadline under the JAMS Rules for issuance of an award. Dkt. No. 62 ¶ 21.

In early June 2023, both sides submitted to the arbitrator their post-hearing briefs, Dkt. No. 67-48; Dkt. No. 67-50; and their proposed arbitral award orders, Dkt. No. 67-47; Dkt. No. 67-49. In their proposed order, Petitioners requested an award of damages solely and directly to the Nominees and to the Company—non-parties to the arbitration—with no damages paid directly to either Petitioner. Dkt. No. 67-47. On July 11, 2023, while awaiting the arbitrator's decision, Levona applied to the arbitrator to order Eletson to produce what Levona claimed was material new information that had been produced by Holdings in the bankruptcy proceedings. Construing the request as one to reopen the hearing, the arbitrator denied that request as both procedurally and substantively flawed on July 18, 2023. Dkt. No. 67-52.

VI. The Interim Ruling and Final Award

On July 28, 2022, Justice Belen issued an "interim" ruling and award ("Interim Award") in Eletson's favor, and on August 15, 2023, Justice Belen issued the Corrected Interim Award. Dkt. No. 67-55. On September 29, 2023, Justice Belen issued a Final Award. Dkt. No. 67-58. The Interim Award and Corrected Interim Award resolved all issues submitted for decision in the arbitration, except those relating to the parties' requests for attorneys' fees, costs, expenses and pre-judgment interest. Dkt. No. 62 ¶ 23.[6] The Final Award adopted, incorporated, and republished the Corrected Interim Award in its entirety and integrated the arbitrator's subsequent determinations regarding the parties' requests for attorneys' fees, costs, expenses and interest. *Id.* ¶ 28.

The arbitrator grouped Eletson's claims that Levona breached the LLCA and the implied covenant of good faith and fair dealing into four categories: (1) claims that Murchinson engaged in deceitful and wrongful conducted that voided *ab initio* Levona's acquisition of Blackstone's Preferred Interests by bribing Corp's Chief Financial Officer to induce him to disclose confidential Company information, and by communicating directly with Company financiers and lenders, thus engaging in "industrial sabotage" prior to Levona's acquisition of the Preferred Interests, in violation of the NDA that Levona had entered into with Blackstone; (2) claims that Levona breached the LLCA after its acquisition of the Preferred Interests and before entering into the BOL by attempting to fire Corp as the manager of the Company's vessels and by failing

[6] On August 14, 2023, Justice Belen issued a ruling rejecting Levona's argument that the Interim Award was not an award subject to JAMS Rule 24, which governs finality, but granted Levona an extension under the JAMS rules to identify "any computational, typographical or other similar error in the Interim Award." Dkt. No. 62 ¶¶ 24–25. Justice Belen found "absolutely no merit to Respondent's argument that the Interim Award was not a final determination with respect to all the issues and arguments raised in this arbitration relating to the merits of the claims and counterclaims." *Id.* ¶ 25.

to disclose its pre-acquisition misuse of confidential information; (3) claims that Levona and "Levona-related entities"—Pach Shemen and Murchinson—violated the Status Quo Injunction on numerous occasions, including by wrongfully declaring the Company in default of the loan made by Levona to the Company, trying to sell the Symi and Telendos, directing the purchase of a controlling position in debt securities of Holdings for the purpose of commencing litigation against Holdings and the involuntary bankruptcy of Holdings; and (4) claims that Levona breached the LLCA and the covenant of good faith and fair dealing by failing to transfer its Preferred Interests in the Company in accordance with the BOL and continuing to act on behalf of the Company in "complete bad faith" including by entering into a letter of intent with Unigas. Dkt. No. 67-58 at 9–11.

Levona, on the other hand, sought a declaration that it remained the holder of the Preferred Interests, and claimed that Eletson had breached the LLCA and Fundamental Action Letter by failing to attend board meetings (thereby preventing the Company from refinancing debt and engaging in due diligence in connection with the Unigas LOI), had tortiously interfered with the Company's LOI with Unigas, and had engaged in conversion for denying Levona the ability to sell the Symi and Telendos. *Id.* at 11.

The arbitrator recognized that resolution of the majority of the claims and counterclaims turned upon the interpretation of the Transaction Documents and whether the Company exercised the Purchase Option to buy Levona out of the Preferred Interests. *Id.* at 9. If the answer to that question was yes, then at some point Levona was no longer a member of the Company and did not have rights under the LLCA to enter into the Unigas LOI or otherwise act on behalf of the Company. If the answer was no, then Levona would have remained a member

of the joint venture and Eletson may have violated its obligations under the LLCA by refusing to, *inter alia*, engage in due diligence relating to the Unigas LOI. *Id.*

As a preliminary matter, Justice Belen found that Murchinson and Pach Shemen were alter egos of Levona. He found that the evidence demonstrated "conclusively that although technically two separate corporate entities, Murchinson and Levona are not distinct for any purposes relevant to these proceedings," and that while Levona, which was a shell entity, might "be the named party, Murchinson is the real party in interest." *Id.* at 21. He thus concluded that "any ruling . . . in this arbitration extends to Murchinson. Any award in favor of Levona is really in favor of Murchinson, and similarly, any award finding liability and damages against Levona, is owed by Murchinson." *Id.* He reached the same conclusion as to Pach Shemen, which he found had the identical ownership of Levona and was "seemingly created for the sole purpose of purchasing a controlling interest in the outstanding bond debt of Holdings so that three weeks later, it could direct the involuntary bankruptcy filing against Holdings." *Id.*

The arbitrator also denied Levona's motion to strike Eletson's claims that the Purchase Option had been exercised and that the Preferred Interests had been transferred to the Nominees, or alternatively to dismiss the claims. *Id.* at 30. He acknowledged that the lack of earlier written notice to Levona of the contingent transfer of the Preferred Interests to the Nominees had initially "raised concern," but concluded that there was no "bad faith or misconduct" in the failure to give notice as "the Eletson witnesses viewed the Company as a family company," "representatives from each of the Preferred Nominees . . . testified that they are bound by any award in th[e] arbitration," and that "Levona was not prejudiced by the later reference to the

Preferred Nominees." *Id.* at 30–31.[7] The arbitrator noted that "Eletson witnesses testified that from the outset of the time that the parties began discussing the buyout of Levona's interests, Eletson intended the preferred units to go to nominees of the Company, and that it told Levona of this intention." *Id.* at 27. The arbitrator stated that Eletson's explanation for why the transfer to the Nominees was not mentioned earlier in the proceedings was credible: "It was only after the Levona-related entities including . . . Pach Shemen made clear in the Holdings bankruptcy that they would attempt to use the bankruptcy proceedings as an end-run around against any adverse award in this arbitration by claiming that the preferred shares were part of the bankruptcy estate of Holdings, that Eletson felt compelled to set the record straight and make clear that . . . Holdings was never intended to directly or indirectly, as owner of the common shares of the Company, own the preferred shares." *Id.* at 31.

Justice Belen next concluded that the Company properly exercised the Purchase Option for the Preferred Interests because it had paid Levona the Purchase Option Consideration and had provided adequate security and/or collateral for the Loan.[8] *Id.* at 34–42. He concluded that the Company paid Levona the Purchase Option Consideration when, pursuant to the Share Transfer Agreement, on March 11, 2022, it transferred the ownership shares of the Symi and Telendos to Levona. *Id.* Levona had argued that the transfer of vessels was the consideration for the Purchase Option itself, rather than the Purchase Option Consideration payable upon the exercise of Purchase Option. Justice Belen rejected that argument. *Id.* He reasoned that because Section 2.1 of the BOL provided that "consideration equal to the Purchase Option Consideration" would

[7] The arbitrator noted that "Levona never sought additional discovery nor requested depositions on the issue of the nominees before or during the arbitration hearing" and "did not conduct any meaningful cross-examination of the three Eletson witnesses who testified about the contingent transfer to the Preferred Nominees or present any contradicting evidence." *Id.* at 31–32.
[8] It was not disputed that the loan remained outstanding and had not been fully repaid. *Id.* at 34.

be paid "on completion of the transfer of the Membership Interests," the BOL contemplated that the Purchase Option Consideration would be paid in exchange for the Preferred Interests and not in exchange for the *option* to purchase the Preferred Interests. *Id.* In his view, that conclusion was consistent with the terms of the LLCA, which prohibits Members (including Levona as the holder of the Preferred Interests) from acquiring or owning any vessels such as the Symi and Telendos. *Id.* at 35. It was only if the Purchase Option was exercised and Levona was no longer a member of the Company that Levona could, consistent with the LLCA, acquire the two vessels.[9] Justice Belen further concluded that the transfer of the Symi and Telendos was adequate consideration because the Net Value of those ships was in excess of $23,000,000, and thus more than the Purchase Option Consideration amount contemplated in the BOL of $23,000,000 less the value of the two ships. *Id.* at 37.

Justice Belen also found that Eletson satisfied the additional conditions for exercising the Purchase Option. Although it was undisputed that Eletson had not repaid the loan to Levona, the arbitrator found that the Company had met the alternative basis outlined in the BOL for exercising the Purchase Option by providing "adequate security and/or collateral." *Id.* at 38–42. He rejected Levona's argument that the Purchase Option could not be exercised without Levona's determination that it had been afforded adequate security or collateral for the Loan, reading the relevant section of the BOL to provide only that the adequacy of the security, not the adequacy of the collateral, would be at Levona's sole discretion. Dkt. No. 67-58 at 39. Justice Belen read the word "adequate" to modify only "security" and not collateral. *Id.* And he concluded that Eletson had provided adequate collateral by assigning Corp's claims against the

[9] The arbitrator also pointed to parol evidence that the parties contemplated that the consideration to be paid to Levona for its interests in the Company was $23,000,000. *Id.* at 36–37.

Company to Levona, despite the fact that the BOL, independent of any collateral, required Eletson to transfer Corp's claims against the Company until the loan was paid off in full and that, in any event, Levona's rights under the loan were senior to the claims by Corp. *Id.* at 38. Justice Belen rejected Levona's contention that it required the assignment of claims not as collateral for the Loan, but as a separate protective measure to prevent Corp from attempting to repay itself before the Company repaid the Loan. *Id.* at 39. He also concluded that the assigned claims constituted adequate collateral because at the time of the assignment their value exceeded $10,000,000. *Id.* at 40.

Justice Belen further found that notice of intent to exercise the Purchase Option was properly provided. Although he found that Eletson did not provide separate formal written notice of exercising the Purchase Option to Levona as required by the BOL, he also found that Levona was on actual notice of the Purchase Option's exercise based on the minutes of a March 10, 2022 Company Board of Directors meeting which contained a reference to an "[u]pdate on Eletson's intention to exercise the purchase option." *Id.* at 42. Based on that language, and the testimony of an Eletson witness that for Eletson, "intention means the actual fact," the Company had, in practice, provided sufficient notice. *Id.* The arbitrator additionally concluded that Eletson had engaged in conduct after March 11, 2022, the date that the Transaction Documents were signed, that was consistent with a buyout by assisting Levona in the sale of the two vessels to third parties, reflagging the vessels from Greece to Liberia, and novating the underlying bareboat charters to Levona's interests. *Id.* at 44. The arbitrator also noted that after that date, Eletson held itself out to be the sole shareholder of the Company and the sole beneficial owner of its remaining twelve vessels, even though the Directors that Levona had named to the Company Board, pursuant to its authority as the holder of the Preferred Interests, remained on the Board

well past March 11. *Id.* He concluded that "[a]t best, the absence of a written notice and a payment of $1 dollar [required by the BOL] are formalities that the parties failed to observe." *Id.* at 45.

Justice Belen concluded that since the conditions for the buyout were met, the Preferred Interests had been transferred to the Company or the Nominees and that, as of March 11, 2022, Levona no longer held the Preferred Interests and ceased to have any ownership interest in the Company. *Id.* at 46. The determination that the Purchase Option was properly exercised and that Levona ceased to have any ownership interest in the Company informed a number of the remainder of Justice Belen's conclusions. Specifically, he concluded that Levona did not have the authority, once it ceased holding the Preferred Interests, to enter into the Unigas LOI, direct the operations of the Company, or otherwise assert control over the assets of the Company. *Id.* at 47.

Having reached the determination that Eletson properly exercised the Purchase Option and that therefore Levona no longer held preferred interests in the Company, the arbitrator turned to the substantive claims. With respect to Eletson's pre-BOL claims, Justice Belen concluded that: (1) he had no jurisdiction over any claims related to conduct before November 2, 2021, when Levona and the Levona-related entities were not parties to the LLCA, and that such entities also could not have breached the terms of the LLCA or the covenant of good faith and fair dealing implied in it for pre-November 2, 2021 conduct, *id.* at 49; and (2) although there was "sufficient evidence" that Murchinson engaged in underhanded tactics and dishonest dealings to acquire Blackstone's interests in the Company, Eletson was not entitled to have Levona's acquisition of those interests voided *ab initio*, *id.* The arbitrator thus rejected Eletson's pre-BOL claims against Levona and the Levona-related entities.

Moving to Eletson's claims regarding Levona's conduct after becoming a signatory to the LLCA, but before entering into the BOL, Justice Belen ruled for Eletson. He found that in the time period after Levona acquired the Preferred Interests and became a member of the Company pursuant to the LLCA in November 2021, and before the BOL was entered into in February 2022, Murchinson bribed Peter Kanelos, the CFO of Corp and a representative of the Company, breached the terms of its NDA with Blackstone, and disclosed confidential Company information in violation of the LLCA and the covenant of good faith and fair dealing. *Id.* at 51. Levona and Murchinson had executed what was called a "Services Agreement" with Kanelos in December 2021 pursuant to which Murchinson wired $100,000 to Kanelos. *Id.* The arbitrator concluded that Kanelos was an officer of the Company, and not just Corp, and that, as a result, Levona and Murchinson's conduct violated a provision of the LLCA that barred Levona from entering into any agreement with an officer or member of senior management of the Company. *Id.* The arbitrator found that Kanelos had clandestine communications with Murchinson before and after Levona's acquisition of the Preferred Interests, contrary to his duties as an officer of Eletson and of the Company, and that he and Murchinson actively concealed their communications. *Id.* at 23–24. Justice Belen also found that Murchinson breached its NDA with Blackstone by communicating directly with the Company's financiers and lenders. *Id.* at 51. Justice Belen further found "Murchinson/Levona continued to disclose confidential information in breach of the LLCA, without Eletson's and the Company's knowledge, and without NDAs, after Levona purported to join the Company." *Id.* at 53–54. Justice Belen found that "Levona breached the covenant of good faith and fair dealing by causing the Company's lenders to arrest five vessels and failing to disclose this conduct after it became a member of the Company." *Id.* at 54. He determined: "Murchinson's improper dealings with the Company's banks and

financiers pre-acquisition of Blackstone's interests caused the arrests of the vessels and that its failure to disclose these actions to Eletson once it became a member in the Company was a breach of the covenant of good faith and fair dealing." *Id.* at 56. And, the arbitrator found that Levona breached the LLCA by attempting to terminate the Company's management agreement with Corp and by attempting to replace the boards of directors of the Company's subsidiaries with Levona's preferred representatives. *Id.* at 58.

Next, Justice Belen found that "Levona-related entities," namely Pach Shemen, had violated the Status Quo Injunction by purchasing a controlling interest in outstanding bonds issued by Holdings, directing the trustee to commence litigation against Holdings, and then directing the commencement of an involuntary bankruptcy petition against Holdings. *Id.* at 59–62. Justice Belen found that, in those ways, Pach Shemen intended to disrupt the status quo and ensure that it would retain the Preferred Interests and be able to use them to control and profit from the sale of the vessels; either the involuntary bankruptcy would strip the arbitrator of jurisdiction or, if not, it would operate as a hedge against a potential loss in the arbitration. *Id.* at 61. On the assumption (which Justice Belen elsewhere found to be faulty) that the Preferred Interests would pass to Holdings in the event of an arbitral ruling in its favor, Pach Shemen as a creditor of Holdings would nonetheless be able to use the bankruptcy proceeding to obtain the Preferred Interests. *Id.* at 61. Finally, Justice Belen rejected Levona's counterclaims based on his finding that Eletson exercised the Purchase Option and bought out the Preferred Interests as of March 11, 2022. *Id.* at 62.

Justice Belen awarded compensatory damages against Levona, and against Murchinson and Pach Shemen as Levona's alter egos, jointly and severally, to the Nominees in the amount of $19,677,743.71 and to the Company in the amount of $23,777,378.50. *Id.* at 100. The damages

included $19,677,743.71 for the loss of the two vessels that Levona caused to be improperly transferred. *Id.* at 63–64. The arbitrator concluded that those damages should be paid directly to the Nominees "as they flow directly from Levona's refusal to relinquish the preferred interests, and the Preferred Nominees hold all title and interest in the preferred interests." *Id.* at 64. He also awarded $21,777,378.50 to the Company for losses arising from Levona's conduct that led to the vessel arrests. *Id.* at 64. He awarded another $2,000,000 to the Company for the (1) reduced bargaining position of the Company with business-sensitive information available to other parties, including those negotiating with the Company; (2) reputational harm to the Company and Eletson from the actions of Levona and its affiliates with financiers and banks but also with customers, employees, and vendors; (3) lost business opportunities, both with existing customers and with new customers, as a result of the reputational harm; (4) Eletson's loss of access to both existing and new sources of capital; and (5) permanent harm from the "indelible record created by Levona and its affiliates." *Id.* at 65–67.[10] The arbitrator further awarded Eletson reimbursement of the attorney's fees and costs incurred in connection with the trustee litigation in the Southern District of New York and the involuntary bankruptcy proceeding in the amount of $3,007,266.20 "to be paid to the entity or individuals who paid those costs and fees." *Id.* at 67, 75. Justice Belen also awarded $43,455,122.21 in punitive damages to be paid to the same entities awarded the underlying compensatory damages. *Id.* at 73.

In addition to the compensatory and punitive damages, Justice Belen awarded Eletson attorneys' fees, expenses and costs for the arbitration of $9,590,222.99. *Id.* at 86. The attorneys' fees and costs awarded included fees and costs incurred in connection with the arbitration, a

[10] Justice Belen awarded the Petitioners prejudgment interest at a contractual rate of ten percent per annum. *Id.* at 73.

success fee owed by Eletson to counsel for Eletson, and fees and costs in connection with the bankruptcy and bondholder litigation, but did not include costs incurred in connection with a state court action that Eletson commenced against Murchinson. *Id.* at 75–76, 84. The arbitrator rejected Levona's argument that Eletson was not the prevailing party because relief was payable only to the Company and to the Nominees, on the theory that it had been clear "throughout the[] proceedings that Eletson would turn over any damages" to the Company and that accordingly it was "Eletson that substantially prevailed on its claims in this arbitration." *Id.* at 88. The arbitrator also rejected Levona's argument that fees should not be awarded for the bankruptcy and bondholder litigation based on JAMS Rule 29, which provides that the "Arbitrator may order appropriate sanctions for failure of a Party to comply with its obligations under any of these Rules or with an order of the Arbitrator." *Id.* at 91. "In other words, the award of attorneys' fees was as damages to compensate for the intentional violations by Levona, through its alter ego, Pach Shemen, of the Status Quo Injunction Order—not a finding of a prevailing party's entitlement to fees or a finding under a fee-shifting provision." *Id.*

PROCEDURAL HISTORY

On August 18, 2023, Petitioners filed the instant Petition, which was ordered unsealed on September 13, 2023. Dkt. Nos. 1, 11, 14. On September 22, 2023, Respondent moved to dismiss the Petition and cross-petitioned to vacate the Award. Dkt. Nos. 28–31.[11] About one

[11] On October 14, 2023, Respondent filed a statement of relatedness asking the Court to refer the Petition to the Bankruptcy Court handling the bankruptcy litigation of Holdings. Dkt. No. 32. Petitioners opposed that request. Dkt. No. 33. On October 6, 2023, Respondent filed a motion to refer the matter to the Bankruptcy Court, Dkt. No. 34, and, on October 10, 2023, Petitioners opposed that motion, Dkt. No. 35. The Court denied the motion to refer the Petition to the Bankruptcy Court on October 10, 2023. Dkt. No. 36. The Court reasoned that, as the tribunal with original jurisdiction of the Petition under the New York Convention and the Federal Arbitration Act, it was the proper entity to decide whether to confirm or vacate the Award. *Id.* Respondent asked the Court to reconsider that order, Dkt. No. 38, but the Court denied that

month later, on October 19, 2023, with leave from the Court, Petitioners filed their Supplemental Amended Petition. Dkt. Nos. 46–47. The Supplemental Amended Petition amended the Petition to reflect that the arbitrator had rendered a Final Award. *Id.* Respondent amended its response and moved to dismiss the Amended Petition on October 24. Dkt. Nos. 48–51. One week later, Petitioners filed their reply in support of the Amended Petition and further opposition to Respondent's cross-petition to vacate. Dkt. Nos. 54–55. Respondent filed its own reply in support of its motion to dismiss the Amended Petition on November 14, 2023. Dkt. Nos. 59–60.

On November 15, the Court held a conference, at which it instructed the parties to each submit statements of undisputed fact pursuant to Federal Rule of Civil Procedure 56.1. That same day, Petitioners filed a Corrected Amended and Supplemental Petition to Confirm the Arbitral Award, reflecting that Petitioners sought only confirmation and not enforcement of the Award. Dkt. No. 62. Petitioners and Respondent filed their respective statements and corresponding exhibits over the following forty-five days. Dkt. Nos. 65–68. On January 2, 2024, the Court held oral argument on the Petition.[12]

DISCUSSION

Petitioners petition for an order confirming the Award and to have judgment entered thereon pursuant to Section 207 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 207. Dkt. No. 62. Respondent moves to dismiss the petition and cross-petitions the Court to vacate the

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request, noting that confirmation was intended to be conducted on a summary and speedy basis and that it was prepared to consider the pending motions on the timetable submitted by the parties, Dkt. No. 39.

[12] The Court received supplemental letter briefs on January 5, 2024. Dkt. Nos. 73, 74. By letter motion on January 11, 2024, Respondent moved to amend its motion to vacate the Award and for discovery. Dkt. No. 75. After hearing oral argument, the Court denied that motion by memorandum and order dated January 23, 2024. Dkt. No. 80.

Award.[13] Dkt. No. 49. Petitioners brought this action under the New York Convention, more formally known as the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38. "Recognition and enforcement seek to give effect to an arbitral award, while vacatur challenges the validity of the award and seeks to have it declared null and void." *Corporación AIC, SA v. Hidroeléctrica Santa Rita S.A.*, 66 F.4th 876, 882 (11th Cir. 2023). "The party opposing enforcement of an arbitral award has the burden to prove that one of the . . . defenses under the New York Convention applies." *Encylopaedia Universalis S.A. v. Encyclopaedia Britannica, Inc.*, 403 F.3d 85, 90 (2d Cir. 2005).

There is a "strong federal policy favoring arbitration, the enforcement of arbitration agreements and the confirmation of arbitration awards." *Pike v. Freeman*, 266 F.3d 78, 89 (2d Cir. 2001). "[T]he confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court." *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984). As a summary proceeding, the decision of whether to confirm an arbitral award "is not intended to involve complex factual determinations, other than a determination of the limited statutory conditions for confirmation or grounds for refusal to

[13] The Court has jurisdiction over this matter. Although review of domestic awards requires an "independent jurisdictional basis" apart from the FAA, confirmation or vacatur of nondomestic or international awards under the New York Convention does not. *F. Hoffmann-La Roche Ltd. v. Qiagen Gaithersburg, Inc.*, 730 F. Supp. 2d 318, 324 (S.D.N.Y. 2010). The FAA expressly provides federal courts with subject matter jurisdiction over an "action or proceeding falling under the [New York] Convention." 9 U.S.C. § 203. The New York Convention applies to arbitral awards relating to commercial matters where either (1) at least one party is not a citizen of the United States; or (2) all parties are United States citizens but there is some reasonable relationship with one of more foreign states. 9 U.S.C. § 202; *see Dumitru v. Princess Cruise Lines, Ltd.*, 732 F. Supp. 2d 328, 335 (S.D.N.Y. 2010). It is not disputed here that no party is domiciled or has its principal place of business in the United States, and that the Award concerns a commercial matter.

confirm." *Zeiler v. Deitsch*, 500 F.3d 157, 169 (2d Cir. 2007). The review of arbitration awards is "very limited . . . in order to avoid undermining the twin goals of arbitration, namely, settling disputes efficiently and avoiding long and expensive litigation." *Folkways Music Publishers, Inc. v. Weiss*, 989 F.2d 108, 111 (2d Cir. 1993). Thus, although the FAA empowers a court to "confirm and/or vacate the award, either in whole or in part . . . a petition brought under the FAA is not an occasion for *de novo* review of an arbitral award," *Scandnavian Reinsurance Co. v. Saint Paul Fire & Marine Ins. Co.*, 668 F.3d 60, 71 (2d Cir. 2012), nor an occasion for the court to conduct a "reassessment of the evidentiary record," *Wallace v. Buttar*, 378 F.3d 182, 193 (2d Cir. 2004).

The FAA provides several grounds upon which a court can refuse to confirm an arbitral award. At the outset, it states that a court must confirm an arbitral award falling under the New York Convention "unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in said Convention."[14] 9 U.S.C. § 207. Article V of the New York Convention specifies seven grounds upon which courts may refuse to recognize an award. *Encyclopaedia Universalis*, 403 F.3d at 90. "[R]ecognition and enforcement of the award may be refused" only if the party against whom the award is invoked "furnishes . . . proof" that: (1) the parties to the arbitration agreement were "under some incapacity" or the agreement "is not valid" under the law designated by the parties, or, in the event they have not designated any, the law of the country where the award was made; (2) "the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;" (3) "[t]he award deals with a difference not

[14] Some courts in this District have found that, by its express terms, the New York Convention does not permit *vacatur* of arbitral award; it only permits a court to refuse to confirm. *See, e.g.*, *Kondot S.A. v. Duron LLC*, 586 F. Supp. 3d 246, 255 (S.D.N.Y. 2022).

contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration," although any "part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;" (4) "[t]he composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;" or (5) "[t]he award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made." New York Convention, art. V. Additionally, "[r]ecognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that" (6) "[t]he subject matter of the difference is not capable of settlement by arbitration under the law of that country" or (7) "[t]he recognition or enforcement of the award would be contrary to the public policy of that country." *Id.*

In addition to the bases for refusing to confirm an arbitral award provided in the New York Convention, and recognized by reference in the FAA, the FAA itself contains several further statutory bases upon which an arbitral award may be vacated. Such statutory bases are authorized by the New York Convention, which instructs "a court in the country under whose law the Arbitration was conducted to apply domestic arbitral law, in this case the FAA, to a motion to set aside or vacate that arbitral award." *Yusuf Ahmed Alghanim & Sons v. Toys "R" Us, Inc.*, 126 F.3d 15, 21 (2d Cir. 1997). Thus, where an "[a]rbitration was entered into in the United States . . . the domestic provisions of the FAA also apply, as permitted by Articles V(1)(e) and (V)(2) of the New York Convention." *Scandinavian Reinsurance Co.*, 668 F.3d at 71; *see also Zurich Am. Ins. Co. v. Team Tankers A.S.*, 811 F.3d 584, 589 (2d Cir. 2016) ("The

award in this case having been rendered in the United States, available grounds for vacatur include all the express grounds for vacating an award under the FAA."); *Temsa Ulasim Araclari Sanayi ve Ticaret A.S. v. CH Bus Sales, LLC*, 2022 WL 3974437 (S.D.N.Y. Sept. 1, 2022) (explaining that where "'the arbitration took place in the United States,' the award also is 'subject to the FAA provisions governing domestic arbitration awards.'" (quoting *Zeiler*, 500 F.3d at 164). Because the arbitration here was conducted in the United States, the Court also considers the grounds for vacatur outlined in the FAA. *See, e.g.*, *Branco Bradesco S.A. v. Steadfast Ins. Co.*, 2018 WL 4284315, at *10 (S.D.N.Y. Sept. 7, 2018).

Section 10(a) of the FAA provides four statutory bases upon which an arbitral award may be vacated:

> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; and
>
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them so that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a). Next, Section 11(b) of the FAA states that that the Court may *modify* the award under certain circumstances, including when "the arbitrators have awarded upon a matter not submitted to them." *Id.* § 11(b); *see also Nat'l Indem. Co. v. IRB Brasil Resseguros S.A.*, 164 F. Supp. 3d 457, 474 (S.D.N.Y. 2016). Still, courts have cabined the applicability of the FAA's statutory bases for vacating, modifying, or correcting an award: "[t]he statutory provisions [of the FAA], 9 U.S.C. §§ 10, 11, in expressly stating certain grounds for either vacating an award or modifying or correcting it, do not authorize its setting aside on the grounds of erroneous finding

of fact or of misinterpretation of law." *Amaicizia Societa Navegazione v. Chilean Nitrate & Iodine Sales Corp.*, 274 F.2d 805, 808 (2d Cir. 1960); *see also Squarepoint Ops LLC v. Sesum*, 2020 WL 996760, at *3 (S.D.N.Y. Mar. 2, 2020) ("Even a 'serious error' in the law or facts is alone insufficient to warrant vacatur." (quoting *KT Corp. v. ABS Holdings, Ltd.*, 784 F. App'x 21, 24 (2d Cir. 2019) (summary order))).

Finally, and in addition to the bases specified in the New York Convention and the FAA, the Second Circuit "has 'held that the court may set aside an arbitration award if it was rendered in manifest disregard of the law.'"[15] *Zurich Am. Ins. Co.*, 811 F.3d at 589 (quoting *Schwartz v. Merrill Lynch & Co.*, 665 F.3d 444, 451 (2d Cir. 2011)). Under these standards, "vacatur of arbitral awards is extremely rare." *Salus Cap. Partners, LLC v. Moser*, 289 F. Supp. 3d 468, 476 (S.D.N.Y. 2018) (quoting *Hamerslough v. Hipple*, 2012 WL 5290318, at *3 (S.D.N.Y. Oct. 25, 2012)).

Respondent argues that (1) the Petition should be dismissed at least in part because the Award was not in favor of Petitioners and Petitioners therefore lack standing, Dkt. No. 50 at 14–16; (2) the arbitrator exceeded his powers, *id.* at 16–31; and (3) the arbitrator manifestly disregarded the law, *id.* at 32–35. There is no argument that the award was procured by corruption, fraud, or undue means, that there was evident partiality or corruption in the arbitrator, or that the arbitrator was guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy.

The Court takes each argument in turn.

[15] The Second Circuit has expressly rejected the more permissive approach by other Circuits to vacatur of arbitral awards on other non-statutory bases, such as when the awards are "completely irrational," "arbitrary and capricious," or "contrary to an explicit public policy." *Porzig v. Dresdner, Kleinwort, Benson, N. Am. LLC*, 497 F.3d 133, 139 (2d Cir. 2007).

I. Petitioners Have Standing

"Article III of the Constitution limits federal courts to deciding 'Cases' and 'Controversies.' For a legal dispute to qualify as a genuine case or controversy, at least one plaintiff must have standing to sue." *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019); *see also Frank v. Gaos*, 139 S. Ct. 1041, 1046 (2019). "To have standing, a plaintiff must 'present an injury that is concrete, particularized and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). "If a plaintiff fails to satisfy any of those elements, a federal court lacks subject-matter jurisdiction to hear the case and it must be dismissed." *Fishon v. Peloton Interactive, Inc.*, 620 F. Supp. 3d 80, 89 (S.D.N.Y. 2022) (quoting *Ross v. AXA Equitable Life Ins. Co.*, 115 F. Supp. 3d 424, 432 (S.D.N.Y. 2015)). "Article III's case-or-controversy requirement applies to actions governed by the FAA." *Stafford v. Int'l Bus. Machines Corp.*, 78 F.4th 62, 68 (2d Cir. 2023); *Badgerow v. Walters*, 142 S. Ct. 1310, 1316 (2022).

Respondent argues that Petitioners lack Article III standing—specifically, injury in fact—to confirm the Award because the arbitrator did not award Petitioners any financial relief. Dkt. No. 50 at 14–16; Dkt. No. 59 at 2-6. Respondent notes that the compensatory damages awarded by the arbitrator are to be paid to persons other than Petitioners, including the Company, the Nominees, and those who advanced the fees and costs expended in the arbitration. Dkt. No. 59 at 4. Respondent also argues that the Award's declaratory relief was purely backward-looking. *Id.* Finally, Respondent argues that its vacatur petition cannot give Petitioners standing to confirm the award because standing addresses whether a party may bring suit in the first place. *Id.* at 5. Respondent bases its argument in large part on language from the Supreme Court's decision in *Town of Chester v. Laroe Estates*, 581 U.S. 433 (2017), that "a plaintiff must

demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Id.* at 439 (quoting *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008)). Relying on the second clause of that sentence, Respondent asserts that the Court must examine each item of relief awarded by the arbitrator to determine whether it provides a financial or other benefit to Respondents and, if it does not, then the Court must refuse to confirm the arbitral award or at least those portions of it that do not benefit Respondents.

Respondent's argument is built on a faulty foundation. Respondent reasons from *Town of Chester* that because portions of the award do not provide financial relief directly to Petitioners, Petitioners do not have a concrete interest in enforcement of those portions and the remedy awarded by the arbitrator will not redress their grievances. Respondent's premise is mistaken. A party to a contract need not have suffered direct financial loss to have a stake in its enforcement or to have suffered a concrete injury when it is breached. "Intangible harms," in addition to physical or monetary injuries, "can also be concrete." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021). "Chief among them are injuries with a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts." *Id.* Rights arising from the law of contracts are no less legal rights than those arising from the laws of property and tort. *See Tenn. Elec. Power Co. v. Tenn. Valley Auth.*, 306 U.S. 118, 137 (1939). A contract right itself is a protectible interest, the breach of which gives rise to a concrete injury. *See Spokeo*, 578 U.S. at 344 (Thomas, J., concurring) (private rights that confer Article III standing include contract rights); *Tech-Sonic, Inc. v. Sonics & Materials, Inc.*, 2015 WL 4715329, at *6 (D. Conn. Aug. 7, 2015).

A division has emerged among sister circuits regarding whether a breach of contract itself constitutes a legally cognizable injury in fact, and thus satisfies the first element of the *Lujan* test

for standing. *See, e.g., Dinerstein v. Google, LLC*, 73 F.4th 502, 522 (7th Cir. 2023) ("A breach of contract alone—without any actual harm—is purely an injury in law, not an injury in fact. And it therefore falls short of the Article III requirements for a suit in federal court."); *Denning v. Bond Pharmacy, Inc.*, 50 F.4th 445, 451 (5th Cir. 2022) ("[A] breach of contract is a sufficient injury for standing purposes.").

In the Court's view, the Fifth Circuit has the better of the arguments. The Seventh Circuit based its view that an alleged breach of contract did not create a cognizable injury giving rise to standing in federal court on its reading of *Spokeo, Inc. v. Robins*, 578 U.S. 330, *TransUnion LLV v. Ramirez*, 594 U.S. 413, and on a law review article. *Dinerstein*, 73 F.4th at 519. In *Spokeo*, the Supreme Court held that a plaintiff asserting a "bare procedural violation" of the Fair Credit Reporting Act ("FCRA"), "divorced from any concrete harm," did not have standing to sue in federal court. 578 U.S. at 341. Congress did not have the power to "authorize that person to sue to vindicate that right." *Id.* In *TransUnion*, the Supreme Court held that the courts lacked the power under Article III of the Constitution to adjudicate claims that a credit reporting agency violated the FCRA by failing to use reasonable procedures to ensure the accuracy of credit files in the absence of evidence that the misleading credit files were provide to any potential creditors, concluding that the misleading information in the internal credit files did not itself constitute a concrete harm. 594 U.S. at 433, 435. The Seventh Circuit, citing *Spokeo* and *TransUnion*, reasoned that breach of a contract created a mere "legal infraction" and was insufficient to create standing in the absence of some additional "factual harm suffered" to the

plaintiff as a result of the breach. *Dinerstein*, 73 F.4th at 519 (quoting F. Andrew Hessick, *Standing and Contracts*, 89 Geo. Wash. L. Rev. 298, 313 (2021)).[16]

The holdings of *Spokeo* and *TransUnion* do not compel that result, and the decisions of the Second Circuit do not support it. Both *Spokeo* and *TransUnion* involved alleged statutory violations. At bottom, the question before the Court was whether Congress could expand the power of the federal courts under Article III by "elevat[ing] to the status of legally cognizable injuries, *de facto* injuries that were previously inadequate in law." *Spokeo*, 578 U.S. at 341 (quoting *Lujan*, 504 U.S. at 578); *see TransUnion*, 594 U.S. at 425. Those cases did not involve, as here, pre-existing common law rights historically enforceable in both federal and state court. *See, e.g.*, *Ogden v. Saunders*, 25 U.S. 213, 259 (1827). The *TransUnion* Court held that Congress "may not simply enact an injury into existence, using its lawmaking power to transform something that is not remotely harmful into something that is." 594 U.S. at 426 (quoting *Hagy v. Demers & Adams*, 882 F.3d 616, 622 (6th Cir. 2018)).

The Court's methodology in *Spokeo* and *TransUnion* support the existence of Article III standing here. The Supreme Court instructed courts to look to "constitutional text, history, and precedent" to mark the limits of Congress's power to create an actionable legal injury sufficient to support Article III standing. *Id.* at 428; *see also id.* at 424 ("[H]istory and tradition offer a meaningful guide to the types of cases that Article III empowers federal courts to consider." (quoting *Sprint Commc'ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 274 (2008))); *Spokeo*, 578

[16] Ironically, the Hessick article cited in *Dinerstein* recognizes that applying *Spokeo* to require a showing of some additional concrete harm to the plaintiff before a breach of contract claim could be brought in federal court "would significantly affect the enforceability of contracts in federal courts" and would have "undesirable consequences," but argues that "the inability to square *Spokeo* with contracts provides a compelling argument that *Spokeo* was wrongly decided." F. Andrew Hessick, *Standing and Contracts*, 89 Geo. Wash. L. Rev. 298, 300–02 (2021). The more logical and compelling inference is that *Spokeo* does not apply to contract claims.

U.S. at 340–41 (standing inquiry derives from case-or-controversy requirement which "is grounded in historical practice"). The Supreme Court did not hold that the plaintiff was required to show financial or physical injury to have Article III standing. Rather, it specifically embraced that "[v]arious intangible harms . . . can also be concrete." *TransUnion*, 594 U.S. at 425; *id.* at 427 (asking whether the plaintiff has alleged "any physical, monetary, or cognizable intangible harm,"); *Spokeo*, 578 U.S. at 340 ("[W]e have confirmed in many of our previous cases that intangible injuries can nevertheless be concrete"). The Court also did not hold that the plaintiff personally need have suffered some additional factual harm in order to have standing. The *Spokeo* Court stated that in some circumstances, those similar to instances at common law, the violation of a legal right can give rise to standing without any showing of additional harm. 578 U.S. at 342; *see also* Erwin Chemerinsky, *Federal Jurisdiction* 74 (8th ed. 2020) ("Injury to rights recognized at common law—property, contracts, and torts, are sufficient for standing purposes."). The *TransUnion* Court then relied upon and cited favorably to *Sprint Communications*, in which (as discussed further *infra*) the Court recognized that a person did not have had to suffer harm individually in order to have standing to bring suit for harm caused to another. *Sprint Commc'ns Co.*, 554 U.S. at 287–88.

Eletson's standing here fits comfortably within constitutional text, history, and precedent. Eletson's injury is breach of a contractual right for Levona to honor the arbitral award. History and precedent support that a person whose contractual rights have been violated has standing to sue the breaching party, regardless of whether the non-breaching party has suffered additional harm. The right of a party to sue for breach of contract, regardless of harm done, has deep and roots in the law. *See* Restatement (First) of Contracts § 328 & cmt. a (1932) ("A breach of contract always creates a right of action; but a breach sometimes occurs without causing any

harm."); Lon L. Fuller & William R. Perdue, *The Reliance Interest in Contract Damages: 1*, 46 Yale L.J. 52, 59 (1936) ("In a society in which credit has become a significant and pervasive institution, it is inevitable that the expectancy created by an enforceable promise should be regarded as a kind of property, and breach of the promise as an injury to that property . . . . That the promisee had not "used" the property which the promise represents (had not relied on the promise) is as immaterial as the question whether the plaintiff in trespass *quare clausum fregit* was using his property at the time it was encroached upon."). For two centuries, courts have recognized that a party who suffers only nominal damages from a material breach may still seek relief in court against the breaching party. *See Marzetti v. Williams*, 109 Eng. Rep. 842, 846 (K.B. 1830) ("[W]herever there is a breach of contract, or any injury to the right arising out of that contract, nominal damages are recoverable."); *Wilcox v. Executors of Plummer*, 4 Pet. 172, 181–182 (1830) (holding that breach of "a contract to act diligently and skil[l]fully" provides a "ground[] of action" in federal court); *see also Luitpold Pharm., Inc. v. Ed. Geistlich Söhne A.G. Für Chemische Industrie*, 784 F.3d 78, 87 (2d Cir. 2015) (reversing district court's grant of dismissal of breach of contract claim for failure to adequately plead damages because plaintiff "would have plausible claims for nominal damages"). Courts also have long recognized that a promisee has the same right to enforce a contractual provision benefitting a third-party beneficiary as a contractual provision benefitting the promissee itself. *See* Restatement (First) of Contracts § 345 & cmt. a (1932) ("This Section is an application of the general rules of damages to contracts for the breach of which a beneficiary as well as the promisee can maintain suit."); Restatement (Second) of Contracts § 305 (1981) ("The promisee of a promise for the benefit of a beneficiary has the same right to performance as any other promise, whether the promise is binding because part of a bargain, because of his reliance, or because of its formal

characteristics."); *see also* Restatement (Second) of Contracts § 305 ("A promise in a contract creates a duty in the promisor to the promise to perform the promise even though he also has a similar duty to an intended beneficiary."); 9 Corbin on Contracts § 46.2 (2023) ("Currently, there is no longer any doubt that a promisee has the same right to performance in a contract for the benefit of a third party as any other contract promise."). It is sufficient that a plaintiff be "'in privity of contract with the defendant *or* is a third party beneficiary of the contract.'" *Tang Cap. Partners, LP. v. BRC Inc.*, 2023 WL 2396635, at *16–17 (S.D.N.Y. Mar. 8, 2023) (quoting *Hillside Metro Assocs., LLC v. JPMorgan Chase Bank, N.A.*, 747 F.3d 44, 49 (2d Cir. 2014))).

The Court in *Spokeo* recognized that a plaintiff would have standing to bring a claim for slander *per se*, notwithstanding that damages might be difficult to prove, 578 U.S. at 341–42, and the Court in *TransUnion* recognized that harms such as "reputational harms, disclosure of private information, and intrusion upon seclusion" could give rise to Article III standing, 594 U.S. at 425. The tort of invasion of privacy, however, was recognized only late in our constitutional history. *See* Restatement (Second) of Torts § 652A & cmt. a ("Prior to 1890 no English or American court had ever expressly recognized the existence of the right [to privacy] . . . ."). There is no reason to believe that the common law claim of breach of contract, which is of at least equal if not greater historical provenance, should be accorded lesser recognition.

The recognition of standing is also supported by constitutional text. While Respondent's challenge to Petitioners' standing arises in the immediate and specific context of a motion to confirm an arbitral award, Respondent's argument cannot be so limited. If accepted, it would deny any party to a contract the right to seek relief in federal court for a material breach in the absence of a showing of some additional harm to itself. But claims for breach of contract arise routinely in both state and federal court, and—not infrequently in those actions—the non-

breaching party has not suffered additional harm separate from the breach itself. It occasionally will bargain for and seek to enforce benefits that will accrue to a third party. The Constitution itself recognizes that when such suits arise between citizens of different States the federal courts are not deprived of power to hear them. Article III of the Constitution provides that the judicial power of the United States extends "to Controversies between two or more States." U.S. Const. Art. III sec. 2, cl. 1. Indeed, the provenance of diversity jurisdiction dates back to the very first Congress. Judiciary Act of 1789, 1 Stat. 73. If the non-breaching party has a claim against the party in breach, the non-breaching party has the right to have that case adjudicated in federal court (assuming that the statutory prerequisites for diversity jurisdiction are satisfied). And if the breaching party is sued in the courts of a foreign state by a citizen of that state, it has the right to remove the matter to federal court (again, assuming the statutory prerequisites are satisfied). In that manner, the Constitution itself guarantees all citizens a fair and impartial tribunal for the adjudication of disputes. *See, e.g.*, *Bank of United States v. Deveaux*, 5 Cranch 61, 87 (1809) (Marshall, C.J.) ("The judicial department was introduced into the American constitution under impressions, and with views, which are too apparent not to be perceived by all. However, true the fact may be, that the tribunals of the states will administer justice as impartially as those of the nation, to parties of every description, it is not less true that the constitution itself either entertains apprehensions on this subject, or views with such indulgence the possible fears and apprehensions of suitors, that it has established national tribunals for the decision of controversies between aliens and a citizen, or between citizens of different states."), *overruled on other grounds by Louisville, C. & C.R. Co. v. Letson*, 43 U.S. 497 (1844); The Federalist No. 80 (Alexander Hamilton) (stating that suits between citizens of different states "should be committed to that tribunal which, having no local attachments, will be likely to be impartial

between the different States and their citizens, and which, owing its official existence to the Union, will never be likely to feel any bias inauspicious to the principles on which it is founded"). But the Seventh Circuit's view would have the effect of stripping the federal courts of power to hear certain of those cases in which, at the founding, the Framers and the First Congress thought the exercise of federal court power would be most important—where the presumed parochialism and prejudices of state courts would not give a foreigner a fair and independent tribunal. *See Erie R. Co. v. Tompkins*, 304 U.S. 64, 74 (1938) ("Diversity of citizenship jurisdiction was conferred in order to prevent apprehended discrimination in state courts against those not citizens of the state."). Under its view, an out-of-state plaintiff who contracted for a benefit to be provided to a third party and whose right to that performance was breached would be relegated in a suit for performance to the courts of the breaching party, except if the plaintiff could show some additional harm to itself. The court would have the general language of "case" or "controversy" negate the more specific language creating diversity jurisdiction in a vast swath of cases.

Finally, the Fifth Circuit's approach is closer to the Second Circuit's reading of *TransUnion*. In the aftermath of *TransUnion*, the Second Circuit has held that a person who was neither a party to a contract nor its third-party beneficiary but was a mere non-party lacked standing to enforce an agreement. *Ryansko v. N.Y. Univ.*, 63 F.4th 186, 193–94 (2d Cir. 2023). Implicit in *Rynasko* was the notion that if the plaintiff—the parent—was a party to the contract, she would have had standing. The Second Circuit has also held a property-based injury, even one rooted in federal statute, is sufficient to give rise to standing in the absence of any other additional harm. *Saba Cap. Cef Opportunities 1, Ltd. v. Nuveen Floating Rate Income Fund*, 88 F.4th 103, 114 (2d Cir. 2023). If one's right to dominion and control over chattels is seriously

interfered with, she has standing to sue. *Id.* The Second Circuit has held, post-*TransUnion*, that a plaintiff whose private information has been disclosed to third parties has standing to sue regardless of whether the third parties used that information to cause additional harm. *Bohnak v. Marsh & McLennan Cos., Inc.*, 79 F.4th 276, 285–86 (2d Cir. 2023). Indeed, the Second Circuit has never suggested that *TransUnion* or *Spokeo* denied a person who had standing to bring a common law contract, tort, or property claim in state court lacked the standing to bring the same claim in federal court.

The conclusion that Petitioners have standing to seek confirmation of the Award readily follows. Petitioners and Respondent are all parties to the LLCA. Dkt. No. 67-2 at 1–2; Dkt No. 67-4 at 2; *cf. Ryansko*, 63 F.4th at 193 (holding that a party lacked standing to bring breach of contract claim because she was "neither a party to the contract . . . nor an intended third-party beneficiary of that agreement, nor an assignee of [a party to the contract]'s claims"). The LLCA contains a mandatory arbitration provision, which states that "[a]ny dispute, claim, or controversy arising out of or relating to this Agreement . . . shall be determined by arbitration in New York County in the State of New York or any other mutually agreeable location, before a single arbitrator." Dkt. No. 67-2 at 69. It also designated arbitration as the "exclusive and *binding* method" of resolving such disputes. *Id.* (emphasis added). It was pursuant to that provision of the LLCA that Holdings and Corp commenced an arbitration proceeding against Respondent in July 2022. Dkt. No. 65 ¶ 40; Dkt. No. 66 ¶ 40. Holdings and Corp bargained and gave consideration for the contractual right for all disputes regarding LLCA to be resolved through arbitration. Respondent agreed to be bound to that method of resolution. Yet, Respondent has not satisfied the award. It has denied that the arbitrator has the power to resolve its dispute with Petitioners and has refused to honor the arbitrator's determination of that dispute.

"An unconfirmed award is a contract right that may be used as the basis for a cause of action[,]" *Florasynth, Inc.*, 750 F.2d at 176, and contract rights are a type of private right recognized as conferring Article III standing. *See Spokeo*, 578 U.S. at 344 (Thomas, J., concurring); *see also Culwick v. Wood*, 384 F. Supp. 3d 328, 339 (E.D.N.Y. 2019). Holdings and Corp have suffered a concrete injury in the breach of their right to have the dispute determined by the arbitrator and have standing to vindicate their contractual right, even if the benefit of the award were to flow entirely to a third-party. *See United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union v. Cookson Am., Inc.*, 710 F.3d 470, 475 (2d Cir. 2013) (per curiam) (concluding that a union had Article III standing to enforce an agreement with an employer to provide benefits to retirees, because "[t]hat this benefit accrues to third parties . . . does not change the fact that the [plaintiff] has negotiated for the benefit and has incurred obligations in order to secure it"); *see also Frontier Commc'ns of N.Y., Inc. v. Int'l Bhd. of Elec. Workers*, 2008 WL 1991096, at *3 (S.D.N.Y. May 6, 2008) (Lynch, J.) ("It is 'axiomatic' that a party to an agreement has standing to sue a counter-party who breaches that agreement, even where some or all of the benefits of that contract accrue to a third party.").

It also is not fatal to the "redressability" element of the standing inquiry that the financial relief to be awarded by a court will be payable to a third-party and not to the plaintiff directly. "[F]ederal courts routinely entertain suits which will result in relief for parties that are not themselves directly bringing suit. Trustees bring suits to benefit their trusts; guardians ad litem bring suits to benefit their warder; receivers bring suit to benefit their receiverships' assignees in bankruptcy bring suit to benefit bankrupt estates; executors bring suits to benefit testator estates; and so forth." *Sprint Commc'ns Co.*, 554 U.S. at 287–88; *see also Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000) (holding that plaintiff had Article III

standing to assert claim for civil penalty to be paid to the Government). "[C]onfirmation arms the winning party of an arbitration 'with a court order . . . [and] a variety of remedies available to enforce the judgment.'" *Teamsters Loc. 177 v. United Parcel Serv.*, 966 F.3d 245, 253 (3d Cir. 2020) (quoting *Florasynth*, 750 F.2d at 176). If the behavior of the defendant giving rise to a concrete injury is the failure to provide a benefit to a third-party as promised, then an order requiring the provision of that benefit will redress the injury no less than the penalty paid to the federal government redressed the injury of the private plaintiff in *Laidlaw*.

Thus, even though it is true that an arbitration award is divisible for purposes of confirmation, *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 104 (2d Cir. 2006) (court "can confirm . . . the award either in whole or in part" in FAA case), the Court need not parse through the arbitral award and determine whether Petitioners have standing to seek the Court's confirmation of each element of the award. Instead, as long as the award remains unsatisfied in any respect, Petitioners—as parties to the LLCA and parties to the arbitration—have standing to seek redress. "A party, successful in arbitration, seeks confirmation by a court generally because he fears the losing party will not abide by the award. Armed with a court order the winning party has a variety of remedies available to enforce the judgment." *Florasynth*, *Inc.*, 750 F.2d at 176. Petitioners bargained for, and gave consideration pursuant to, a contract—the LLCA—that bound Petitioners and Respondent to resolve disputes relating to the contract through arbitration. Respondent has failed to satisfy that award. Confirmation of the award would reduce the arbitrator's contractually-enforceable order into a judicially-enforceable judgment, thus providing redress for Petitioners' grievance that the award has not been satisfied. *Cf. Stafford*, 78 F.4th at 67 ("Confirmation is a 'mechanism[] for enforcing arbitration awards.'" (quoting *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 582 (2008))); *D.H. Blair & Co.*, 462 F.3d at

104 ("The request [to confirm an arbitral award] simply [seeks] to give effect to the arbitration award."); *Footchrome, Inc. v. Copal Co., Ltd.*, 517 F.2d 512, 516 (2d Cir. 1975) ("The award itself is inchoate until enforced by judgment."). Respondent has not demonstrated that anything more is necessary.

The few cases upon which Respondent relies are not to the contrary. *Town of Chester* does not require a plaintiff—in order to have Article III standing—to show that the requested relief will benefit himself or herself financially. The plaintiff need only show for each claim asserted and for each form of relief claimed, a concrete and particularized injury traceable to the defendant that can be redressed through judicial relief requested. The plaintiff who has suffered damages in the past does not thereby have standing to assert a claim for injunctive relief, preventing the defendant from engaging in misconduct in the future; he also needs to allege a real and immediate risk of future injury. *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 (1983); *accord Soule v. Conn. Ass'n of Sch., Inc.*, 90 F.4th 34, 47 (2d Cir. 2023) (en banc) (separately analyzing whether plaintiffs' injury was redressable "by monetary damages and by the specific injunctive relief sought"). Likewise, a plaintiff who has standing to complain about a municipal property tax exemption does not thereby have standing to challenge a state franchise tax credit. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). It does not follow from *Town of Chester* that a person who has suffered a concrete non-speculative harm is denied a federal forum simply because the relief that will redress that harm will also accrue to the benefit of a third party.

In *Stafford v. IBM*, 78 F.4th 62, the Second Circuit held that a motion to seek confirmation of an arbitral award was moot and thus the courts did not have Article III standing

to hear it.[17] The court did not review the underlying relief awarded by the arbitrator or base its decision on any issue regarding the persons whom that relief benefitted. Rather, the court concluded that the case was moot because respondent had satisfied its obligations under an arbitration award "in full"; regardless of whom the award benefitted, there was nothing a judgment could remedy. The respondent did not owe the petitioner any further relief. *Id.* at 65, 68. There was "no longer any issue over payment or ongoing compliance with a prospective award." *Id.* at 68. The petitioner's alleged injury had been fully redressed, and its contractual right to resolution by arbitration had been fully vindicated. In this case, by contrast, Petitioners do not base standing solely on the "statutory right to seek confirmation under the FAA." *Id.* at 69. Respondent breached its contract with Petitioners and have yet to remedy that breach.[18] The Award provides relief intended to redress that breach. The dispute is not moot. A judgment is necessary for Petitioners to obtain the relief that the arbitrator determined would redress the contract rights of Petitioners that the arbitrator determined were violated.

Put differently, *Stafford* does not hold that a party to arbitration must have something financial to gain from enforcement of the award, in order to have Article III standing to seek its confirmation. Further support for this conclusion can be found in the *Stafford* court's favorable

[17] The Court notes that other Circuits would hold that, even if an arbitral award is fully satisfied, that a party could still have standing to apply for the award's confirmation. *See Teamsters Loc. 177*, 966 F.3d at 251–52 (holding that "[u]nder the FAA a party's injuries are only fully remedied by the entry of a confirmation order," and that "the dispute the parties went to arbitration to resolve is 'live' until the arbitration award is confirmed and the parties have an enforceable judgment in hand").

[18] Although the Court is dubious of the proposition that a pledge to comply with an arbitration award would defeat standing, it need not address that issue except to note that such a proposition, if accepted, could undermine the right conferred by the FAA and the New York Convention to confirmation of an award. *See Teamsters Loc. 177*, 966 F.3d at 253 & n.3. A respondent seeking to avoid payment under the award could simply pledge that it would satisfy the award, only to renege after the time period for confirmation had run.

mention of a Seventh Circuit case, *Unite Here Local 1 v. Hyatt Corp.*, in which that court found the petitioner had Article III standing to confirm an arbitral award. 862 F.3d 588 (7th Cir. 2017). In that case, the petitioner sought confirmation of two arbitral awards, one of which granted relief only in the form of an order for respondent to cease and desist certain conduct prohibited by the collective bargaining agreement between the parties, and the other of which granted monetary relief in the form of backpay, along with an order for respondent to cease and desist conduct prohibited by the collective bargaining agreement. *Id.* at 590–94. The court then found that there was "plainly a live dispute about whether [the respondent was] in fact acting in compliance with the awards," because "41 pending alleged violations of the award" created "an ongoing controversy." *Id.* at 598–99. Summarizing that and other cases, the *Stafford* court stated that a petitioner lacked standing to confirm an arbitral award "when there is no longer any issue over payment or ongoing compliance with a prospective award." 78 F.4th at 68. Finally, the court concluded its standing analysis by stating that "[t]he FAA's process for confirming an arbitration award still requires Article III injury, and § 9 of the FAA does not itself confer standing." *Id.* at 69.

Compagnie Noga d'Importation et d'Exportation S.A. v. Russian Fed'n, is also far afield. 2008 WL 3833257, at *6 (S.D.N.Y. Aug. 15, 2008), *aff'd*, 350 F. App'x 476 (2d Cir. 2009) (summary order). In that case, the court held that a party to an arbitration who had assigned its claim and the proceeds of an arbitration award to a syndicate of banks lacked standing to bring suit on that claim and to enforce the arbitral award. But Respondent's reliance on *Compagnie Noga* confuses an assignee with a third-party beneficiary. "An unequivocal and complete assignment extinguishes the assignor's rights against the obligor and leaves the assignor without standing to sue the obligor." *Aaron Ferer & Sons Ltd. v. Chase Manhattan Bank*, 731 F.2d 112,

125 (2d Cir. 1984); *see Valdin Invs. Corp. v. Oxbridge Cap. Mgmt., LLC*, 651 Fed. App'x 5, 7 (2d Cir. 2016) (summary order) ("Valdin's assignment of its rights extinguished its claims against Oxbridge and deprived it of any interest in this litigation. Valdin therefore lacks standing."); *Wistron Neweb Corp. v. Genesis Networks Telecom Servs., LLC*, 2023 WL 4493542, at *1 (S.D.N.Y. July 12, 2023) (same); *Sonterra Cap. Master Fund, Ltd. v. Barclays Bank PLC*, 403 F. Supp. 3d 257, 260 (S.D.N.Y. 2019) ("Where a valid assignment has been executed, the assignee is 'the real party in interest' and 'the right to sue is exclusively' the assignee's." (quoting *Dennis v. JPMorgan Chase & Co.*, 342 F. Supp. 3d 404, 409 n.6 (S.D.N.Y. 2018))). By contrast, both the parties to the contract and an intended third-party beneficiary have standing to enforce a contract. *Wistron Neweb Corp.*, 2023 WL 4493542, at *1. The petitioner in *Compagnie Noga* had assigned its interest in the claim in that case. 2008 WL 3833257, at *5. Accordingly, the holding in *Compagnie Noga* that the petitioner no longer had standing was and remains unexceptional. Acceptance of Respondent's argument here, on the other hand, would be unprecedented.

II. Respondent's Arguments that the Arbitrator Exceeded His Powers

Respondent next argues that the arbitrator exceeded his powers in violation of Section 10(a)(4) of the FAA by (1) adjudicating claims for conduct that falls outside the scope of the arbitration agreement in the LLCA and that is expressly subject to a London-seated arbitral tribunal; (2) adjudicating the rights and duties of non-parties to the arbitration proceedings and non-signatories to the LLCA; (3) adjudicating claims barred by the bankruptcy; (4) awarding fees incurred in the bankruptcy case and the bondholder litigation, in a manner that both violates the bankruptcy court's exclusive jurisdiction and is outside the scope of the LLCA's arbitration clause; and (5) awarding fees and costs to non-prevailing parties.

The FAA permits vacatur of an arbitral judgment "where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a)(4). The Second Circuit has "consistently accorded the narrowest of readings to section 10(a)(4) permitting vacatur where the arbitrator has exceeded [his] powers." *Jock v. Sterling Jewelers Inc.*, 942 F.3d 617, 622 (2d Cir. 2019) (quoting *ReliaStar Life Ins. Co. of N.Y. v. EMC Nat'l Life Co.*,564 F.3d 81, 85 (2d Cir. 2009)). The focus of the inquiry is "whether the arbitrator had the power, based on the parties' submissions or the arbitration agreement, to reach a certain issue, not whether the arbitrator correctly decided that issue." *Id.* (alterations omitted) (quoting *Jock v. Sterling Jewelers Inc.*, 646 F.3d 113, 122 (2d Cir. 2011)); *see also Subway Int'l, B.V. v. Subway Russia Franchising Co., LLC*, 2021 WL 5830651, at *4 (S.D.N.Y. Dec. 8, 2021); *LTF Constr. Co., LLC v. Cento Sols. Inc.*, 2020 WL 7211236, at *3 (S.D.N.Y. Dec. 7, 2020). "[A]n arbitrator may exceed her authority by, first considering issues beyond those the parties have submitted for her consideration, or second, reaching issues clearly prohibited by law or by the terms of the parties' agreement." *Jock*, 942 F.3d at 622. "This is an extremely deferential standard of review." *Id.* "It is only when an arbitrator strays from interpretation and application of the agreement and effectively dispenses his own brand of industrial justice that his decision may be unenforceable." *Stolt-Nielson S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671 (2010).

A. Adjudication of Claims Subject to a Different Arbitration Agreement

Respondent argues that the arbitrator exceeded his powers under the arbitration clause of the LLCA by improperly adjudicating claims stemming from an alleged breach of the BOL. Dkt. No. 50 at 23–25. In particular, Respondent asserts that the dispute about whether the Company exercised the Purchase Option should have been arbitrated in London before the London Court of International Arbitration ("LCIA") under English law pursuant to the terms of

the BOL, and not in New York pursuant to the terms of the LLCA. *Id.* at 25. Respondent points to portions of the Award in which the arbitrator "concluded that because 'the conditions for the buyout were met . . . pursuant to the BOL, Levona's interests should have been transferred to Eletson Gas, or its nominee[,]" *id.* at 24 (quoting Dkt. No. 67-58 at 47), to posit that the arbitrator acted outside his scope of "authority to decide only those issues 'arising out of or relating to' the LLCA[,]" *id.* (quoting Dkt. No. 67-2 § 12.14). Respondent argues that the arbitrator therefore improperly awarded unjust enrichment damages for events "not governed by the arbitration agreement." *Id.* at 24 (internal citation omitted).

Respondent's arguments mirror those that it made to the arbitrator. *See* Dkt. No. 31-8. Before the arbitrator, Respondent argued that, in the words of the arbitrator, "whether the Option was exercised, or whether performance under the Option or Loan was completed, must be decided by the LCIA, not JAMS." *Id.* at 5. It further asserted, again in the words of the arbitrator, that "the issue of who controls the preferred units is outside of JAMS' jurisdiction because it requires the arbitrator to interpret and enforce the Transaction Documents, which, according to Respondent, provide for arbitration in the London Court of International Arbitration." *Id.*

The arbitrator twice rejected those arguments. In his ruling on the motion to strike, the arbitrator first concluded that, by filing counterclaims, Respondent had availed itself of the arbitral forum, submitted to JAMS, and waived any objection to the arbitrator's assertion of jurisdiction. *Id.* at 12. In the alternative, and independently, the arbitrator rejected Respondent's argument on the merits because the language of the arbitration provision in the LLCA was broad, and "[t]o the extent that the Transaction Documents or events or actions that occurred in connection with those transactions 'relat[e] to [the LLC Agreement] or the breach, termination,

enforcement, interpretation or validity thereof' the broad arbitration provision of the LLC Agreement governs." *Id.* at 13 (quoting Dkt. No. 67-2 § 12.14(a)) (alterations in original). The arbitrator rejected Respondent's proposed construction of the two arbitration provisions which would "require that the parties arbitrate their disputes in two steps: first, go to London to adjudicate performance under the Transaction Documents and then second, come to JAMS to determine breaches under the [LLCA]." *Id.* at 14. According to the arbitrator, such an interpretation "would render impossible the intent of the arbitration provision in the [LLCA], which contemplates that the parties use best efforts to arbitrate to completion disputes within 150 days from the selection of the arbitrator." *Id.* In the Award, the arbitrator reiterated that Levona itself had sought relief for counterclaims that the arbitrator could only award if he interpreted, enforced and provided relief pursuant to the Transaction Documents, and had thereby waived any jurisdictional objections concerning the claims and counterclaims. Dkt. No. 67-58 at 13.

At the outset, the parties dispute whether Respondent waived its objection to the arbitrator's jurisdiction to determine if the Purchase Option was exercised. It is for the Court to determine whether Respondent waived its objection. *Cf. Opals on Ice Lingerie v. Bodylines, Inc.*, 320 F.3d 362, 368 (2d Cir. 2003) ("[I]n this case, Bodylines objected repeatedly to arbitration, beginning with the statement by its counsel in June 1999 which inspired Opals to file the instant litigation. Correspondence between the parties throughout the period of the dispute further supports Bodylines' assertion that it continuously objected to arbitration. These objections prevent a finding of waiver."). Further, the question of whether a party has waived its right to object to the arbitrability of an issue is governed by federal law. *See, e.g., Woodcrest Nursing Home v. Loc. 144, Hotel, Hospital, Nursing Home and Allied Services Union*, 788 F.2d 894, 899 (2d Cir.1986) (per curiam). Even where a party participates in arbitral proceedings, it is

not deemed to have waived its objection to arbitrability of an issue if it "consistently and vigorously maintained its objection to the scope of arbitration." *Coady v. Ashcraft & Gerel*, 223 F.3d 1, 9 n.10 (1st Cir. 2000). "[T]he fact that a party 'forcefully object[s]' to having an arbitrator decide a dispute . . . suggests an unwillingness to submit to arbitration." *Opals*, 320 F. 3d at 369 (quoting *First Options of Chi. v. Kaplan*, 514 U.S. 938, 946 (1995) (alteration added)). Here, Respondent did not waive its objection. The first argument presented by Respondent in its response to the Petitioners' statement of claims was that the arbitrator lacked jurisdiction to determine whether the Purchase Option was exercised, stating: "the question of this matter is simple: who holds the preferred shares of [the Company] . . . ? As will be shown, this can *only* be resolved by an adjudication on the [BOL] and various other documents signed at the nexus of the transaction in question, all of which demand arbitration in London and are governed by English Law." Dkt. No. 67-17 at 1. Respondent again reiterated its objection to the arbitrator's jurisdiction to resolve the Purchase Option issue in its amended statement of counterclaims, Dkt. No. 67-25 at 1, in its motion to strike Petitioners' allegations regarding the Preferred Interests, Dkt. No. 67-40 at 5, and its post-hearing brief, Dkt. No. 67-48 at 55. Petitioner thus did not waive its objection to the arbitrator's jurisdiction to determine the Purchase Option issue.

Even so, however, Respondent's argument underlying the objection—that the arbitrator exceeded his authority in awarding unjust enrichment damages and in addressing the question of Levona's ownership of the Preferred Interests—is without merit. The Supreme Court and the Second Circuit have repeatedly "held that parties may delegate threshold arbitrability questions to the arbitrator, so long as the parties' agreement does so by 'clear and unmistakable' evidence." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 530 (2019); *see also First Options of Chi.*, 514 U.S. at 944–45 ("In this manner the law treats silence or ambiguity about

the question '*who* (primarily) should decide arbitrability' differently from the way it treats silence or ambiguity about the question '*whether* a particular merits-related dispute is arbitrable because it is within the scope of a valid arbitration agreement'—for in respect to this latter question the law reverses the presumption.") (emphasis in original). Moreover, when "parties explicitly incorporate rules that empower an arbitrator to decide issues of arbitrability, the incorporation serves as clear and unmistakable evidence of the parties' intent to delete such issues to an arbitrator." *Contec Corp. v. Remote Sol., Co., Ltd.*, 398 F.3d 205, 209 (2d Cir. 2005); *see Lonstein L. Off., P.C. v. Evanston Ins. Co.*, 2022 WL 72302, at *8 (S.D.N.Y. Jan. 6, 2022); *Convergen Energy LLC v. Brooks*, 2020 WL 5549039, at *16 (S.D.N.Y. Sept. 16, 2020); *Paduano v. Express Scripts, Inc.*, 55 F. Supp. 3d 400 (E.D.N.Y. 2014).

The arbitration agreement in the LLCA is broad. It provides that "[a]ny dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof (including the scope or applicability of this agreement to arbitrate) shall be determined by arbitration in New York County in the State of New York or any other mutually agreeable location, before a single arbitrator." Dkt. No. 67-2 § 12.14(a). The mandatory arbitration provision does not just apply to disputes or controversies arising out of the LLCA but also to any disputes or controversies "relating to" the LLCA. *See Louis Dreyfus Negoce S.A. v. Blystad Shipping & Trading Inc.*, 252 F.3d 218, 225 (2d Cir. 2001); *Collins & Aikman Prods. Co. v. Bldg. Sys., Inc.*, 58 F.3d 16, 20 (2d Cir. 1995). The provision also is not limited to claims or controversies relating to breaches of the LLCA but to any dispute, claim or controversy relating to the "termination, enforcement, interpretation, or validity" of the LLCA. *See, e.g.*, *Davitashvili v. Grubhub Inc.*, 2023 WL 2537777 (S.D.N.Y. Mar. 16, 2023); *see also Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 65 (2010).

Moreover, and importantly, the parties clearly and unmistakably delegated to the arbitrators the authority to decide the scope and application or the agreement to arbitrate. The breadth of the authority the parties delegated to the arbitrator is reinforced by their decision that the arbitration would be "administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures." LLCA at 69. Rule 11 of the JAMS Rules and Procedures which provides, in relevant part, that jurisdictional disputes, including disputes over the interpretation and scope of the agreement to arbitrate, will be submitted to the arbitrator:

> A. Once appointed, the Arbitrator shall resolve disputes about the interpretation and applicability of these Rules and conduct of the Arbitration Hearing. The resolution of the issue by the Arbitrator shall be final.
>
> B. Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are the proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator. The Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter.[19]

Dkt. No. 55-1 at 9.

"[I]f a valid [arbitration] agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue." *Id.*; *see also Beijing Shougang Mining Inv. Co., Ltd. v. Mongolia*, 11 F.4th 144 (2d Cir. 2021); *Jock*, 942 F.3d at 624 ("[W]hen parties to an agreement explicitly incorporate rules that empower an arbitrator to decide an issue, 'the incorporation serves as clear and unmistakable evidence of the parties' intent to delegate such issues to an arbitrator.'" (quoting *Wells Fargo Advisors, LLC v. Sappington*, 884 F.3d 392, 396 (2d Cir. 2018)); *Mumin v. Uber Techs., Inc.*, 239 F. Supp. 3d 507, 522–23 (S.D.N.Y. 2017) (finding clear and unmistakable intent based on contract language that

[19] The language "as a preliminary matter" conveys that the arbitrator is to decide the scope of the arbitration before addressing the merits and not to limit the scope of the arbitrator's authority. *Cf. Emilio v. Sprint Spectrum L.P.*, 508 F. App'x 3, 5 (2d Cir. 2013) (summary order); *Parrella v. Orange Rabbit, Inc.*, 2021 WL 4462809, at *8–9 (S.D.N.Y. Sept. 29, 2021).

stated "disputes arising out of or relating to interpretation or application of this Arbitration Provision shall be decided by an Arbitrator and not by a court or judge"); *Fraternity Fund Ltd. v. Beacon Hill Asset Mgmt. LLC*, 371 F. Supp. 2d 571, 575–76 (S.D.N.Y. 2005) (finding clear and unmistakable intent based on contract language that delegated to an arbitrator disputes involving "meaning, construction, validity and/or enforceability"). "'[O]nce the parties have agreed that an arbitrator may decide questions regarding the scope of arbitrable issues in the first instance,' federal courts are indeed required to afford deference to the arbitral tribunal's decision as to that scope." *Beijing Shougang*, 11 F.4th at 156 (quoting *Schneider v. Kingdom of Thailand*, 688 F.3d 68, 76 (2d Cir. 2012)). The Second Circuit has instructed that the Court may disturb the arbitrator's ruling as to jurisdiction only if the ruling did not fall "within his interpretative authority" and if the arbitrators reasoning did not draw "its essence from the agreement to arbitrate" but instead effectively "dispensed its own brand of justice." *Beijing Shougang*, 11 F.4th at 161 (internal quotation marks and citations omitted).

Respondent has not satisfied its burden to show that the arbitrator exceeded his interpretative authority in awarding unjust enrichment damages and in deciding issues regarding Levona's ownership of the Preferred Interests. *See Smarter Tools Inc. v. Chongqing SENCI Import & Export Trade Co., Ltd.*, 57 F.4th 372, 378 (2d Cir. 2023) (burden is on party seeking to vacate the award to show that arbitrator exceeded his authority). The Third Amended Statement of Claims and Response to Counterclaims submitted by Petitioners asserted that Levona had engaged in "egregious and ongoing breaches" of the LLCA. Dkt. No. 31-35 ¶ 1. In the Award, the arbitrator found that Levona breached its obligations arising out of the LLCA, including by bribing an employee of Corp and causing him to disclose confidential information, violating confidentiality obligations itself, influencing Gas's financiers to turn against Petitioners by

causing the arrest of Gas's vessels and doing so without notifying Petitioners, failing to acknowledge that Eletson had fully complied with the terms of the BOL Purchase Option, improperly purporting to act on behalf of the Company in its business dealings with third parties, improperly threatening Eletson and its affiliated officers and directors, improperly purporting to seize control of the Company's board of directors post-March 11, 2022, improperly purporting to assert control over the assets of the Company post March 11, 2022, improperly purporting to call and hold meetings of the Board of Directors post March 11, 2022, and breaching its obligations under the LLCA. Dkt. No. 67-58 at 96–98. The arbitrator did not purport to award damages for breach of the BOL. He awarded damages of $19,677,743,71 for the lost services of the Symi and Telendos without the reciprocal transfer of the Preferred Interests. The damages were based on an estimate of what the Company would have made from the two vessels had it not transferred them and was awarded to the Nominees because they flowed from Levona's refusal to relinquish the Preferred Interests and the Nominees hold all title and interest in the Preferred Interests. *Id.* at 64–65. The arbitrator also awarded $21,777,378.50 as directly calculable losses arising from Levona's conduct that led to the vessel arrests, including lost revenues and fixed costs incurred due to the arrests, payable to the Company as compensatory damages. *Id.* at 65. Finally, the arbitrator awarded $2,000,000 to be paid to the Company from a number of other wrongful acts of Levona including the loss of access to capital, management distraction, and reputational harm. *Id.* at 66.

The arbitrator based his conclusion that he had authority to make these determinations on the language of the arbitration provision in the LLCA, and did not dispense his own brand of industrial justice. The Court need not conclude that it would have reached the same decision as the arbitrator to conclude that he acted within the authority granted him by the parties to

determine his own jurisdiction. *See Beijing Shougang*, 11 F.4th at 158, 161. The dispute—and the arbitrator's ultimate determination of wrongful conduct—arose out of the LLCA and the relationship between the parties formed as a result of the LLCA, and related not just to breaches of the LLCA but also to its termination, enforcement and interpretation. Levona is in error when it asserts that the award of unjust enrichment damages related to events "not governed" by the LLCA.[20] It is precisely as a result of Levona's conduct that the arbitrator determined that the Company and the Nominees suffered the damages the arbitrator found that they had suffered. With respect to the unjust enrichment damages in particular, the arbitrator concluded that it was because Levona had taken unilateral acts—without authority to do so under the LLCA—that the Company had suffered foregone profits.

Levona is mistaken in its argument that the arbitrator was required as a matter of law to forego determination of Petitioners' claims because the arbitrator could not conclude whether Levona had engaged in wrongful conduct arising out of or relating to the LLCA without first making an antecedent determination as to whether Eletson had properly exercised the Purchase Option. Eletson's claim for damages turned upon conduct engaged in by Levona both before and after the exercise of the Purchase Option, and the arbitrator did not award damages for Levona's failure to honor the Purchase Option. Thus, to a large extent, the question of whether Eletson

[20] Thus, Levona's reliance on the dictum from *Smarter Tools* that "vacatur was necessary where, for example, the arbitrators exceeded their powers [by awarding damages] for events not governed by the arbitration agreement," 57 F.4th at 382, is not availing. *Smarter Tools* cited *In re Arbitration Between Melun Indus., Inc. & Strange*, 898 F. Supp. 990, 994–95 (S.D.N.Y. 1990), but the distance between the facts of this case and those of *Melun Industries* demonstrate the weakness of Respondent's argument. In *Melun Industries*, the arbitration provision at issue limited the arbitrator to resolving disputes over a post-closing adjustment and thus the arbitrator exceeded his authority by resolving issues regarding the accuracy of an opening balance sheet. The case bears no resemblance to this one in which the arbitration clause is broad and delegates issues regarding arbitrability to the arbitrator.

had properly exercised the Purchase Option was in the nature of an affirmative defense or an "anticipatory repudiation"—if Eletson had not exercised the option and if Levona had maintained its Preferred Interests, then arguably Levona would not have breached the LLCA and its conduct would not have violated any implied covenant of good faith and fair dealing.

The antecedent determination that the arbitrator was required to make here bears similarity to the antecedent determinations that courts are required to make when analyzing a claim for tortious interference, which only lies if the plaintiff had a business relationship with a third party that the defendant injured, and which may be overcome by a showing by the defendant that interference arose through the exercise of its equal or superior right in the breaching party's business. *See, e.g.*, *Lesnik v. Lincoln Financial Advisors Corp.*, 2020 WL 3057456, at *3 (S.D.N.Y. June 9, 2020) ("Under New York law, a claim for tortious interference with prospective economic advantage comprises four elements: (a) business relations with a third party; (b) that defendant knew of the relationship and interfered with it; (c) defendant acted with the sole purpose of harming the plaintiff or solely out of malice or used wrongful means; and (d) injury to that business relationship."); *Alvarado v. Mount Pleasant Cottage Sch. Dist.*, 404 F. Supp. 3d 763, 791 (S.D.N.Y. 2019) ("It is imperative that, in bringing a tortious interference claim, a plaintiff identify the relevant terms of the contract that existed that were breached by defendant.") (internal quotation marks omitted); *Lesesne v. Brimecome*, 918 F. Supp. 2d 221, 227 (S.D.N.Y. 2013) (noting the requirement that a plaintiff "identify the potential customers at issue when asserting a cause of action for interference with prospective economic advantage"); *White Plains Coat & Apron Co., Inc. v. Cintas Corp.*, 835 N.Y.S.2d 530, 532 (2007) ("In response to such a claim, a defendant may raise the economic interest defense—that it acted to protect its own legal or financial stake in the breaching party's business."). In other words,

judicial bodies are called upon to make antecedent determinations about rights and obligations arising out of contracts even where the judicial body would not have jurisdiction to decide a dispute arising out of those contracts.

Further, once the arbitrator had properly seized jurisdiction of the dispute, it was not outside the scope of his remedial authority to determine that the Preferred Interests should be transferred to the Nominees. As the arbitrator reasoned, because Eletson asserted breaches of the LLCA, the parties were not required to "arbitrate their disputes in two steps: first, go to London to adjudicate performance under the Transaction Documents and then second, come to JAMS to determine breaches under the [LLCA]." *Id.* at 14.

B. Adjudication of the Rights and Duties of Non-Parties to the Arbitration and Non-Signatories to the Arbitration Agreement

Respondent argues that the arbitrator improperly adjudicated the rights and duties of non-parties to the arbitration proceedings and non-signatories to the LLCA. Dkt. No. 50 at 17–22. Specifically, Respondent complains that the arbitrator could not have awarded damages to the Company, as a non-party to the arbitration proceedings, or to the Nominees, as non-parties to the arbitration proceedings and non-signatories to the LLCA. *Id.* at 19. It also takes issue with the arbitrator's award of damages against Murchinson and Pach Shemen as Levona's alter egos because Murchison and Pach Shemen were not parties to the arbitration proceedings and are not signatories to the LLCA. *Id.* at 22–23.

1. The Award of Relief to Non-Signatories and Non-Parties

Respondent argues that the arbitrator erred and exceeded his powers under the arbitration agreement by adjudicating the rights and obligations of the Company and the Nominees. Dkt. No. 50 at 19–22; Dkt. No. 59 at 6. Respondent argues that the arbitrator was without power to award damages to the Nominees because they were neither signatories to the LLCA nor parties

to the arbitration proceedings, Dkt. No. 50 at 19, and that he lacked power to award damages to Gas because, although it was a signatory to the LLCA, it was not a party to the arbitration, *id.* at 19–20. The argument is without merit.

The arbitration agreement in the LLCA is broad. It commits to the arbitrator the resolution of "[a]ny dispute, claim or controversy arising out of or relating to th[e LLCA] or the breach, termination, enforcement, interpretation or validity thereof (including the determination of the scope or applicability of this agreement to arbitrate) . . . ." Dkt. No. 67-2 at 69; *see Alghanim v. Alghanim*, 828 F. Supp. 2d 636, 652 (S.D.N.Y. 2011) ("An arbitration clause covering '[a]ny claim or controversy arising out of or relating to th[e] agreement,' is 'the paradigm of a broad clause.'" (quoting *Collins & Aikman Prods. Co.*, 58 F.3d at 20)); *see also Specht v. Netscape Commc'ns Corp.*, 306 F.3d 17, 35–36 (2d Cir. 2002); *Genesco, Inc. v. T. Kakiuchi & Co., Ltd.*, 815 F.2d 840, 845 (2d Cir. 1987). It also provides "[t]he arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures." Dkt. No. 67-2 at 69.

"Where an arbitration clause is broad, arbitrators have the discretion to order such remedies as they deem appropriate." *ReliaStar Life Ins. Co. of N.Y.*, 564 F.3d at 86. "It is not the role of the courts to undermine the comprehensive grant of authority to arbitrators by prohibiting an arbitral security award that ensures a meaningful final award." *Banco de Seguros del Estado v. Mut. Marine Off., Inc.*, 344 F.3d 255, 262 (2d Cir. 2003); *see also Forschner Grp., Inc. v. Arrow Trading Co., Inc.*, 124 F.3d 402, 406 (2d Cir. 1997). Indeed, "arbitrators are generally afforded greater flexibility in fashioning remedies than are courts." *Benihana, Inc. v. Benihana of Tokyo, LLC*, 784 F.3d 887, 902 (2d Cir. 2015); *see Shasha v. Malkin*, 2021 WL 11960275, at *7 (S.D.N.Y. Mar. 24, 2021) ("Arbitrators 'may grant equitable relief that a Court

could not.'" (quoting *Sperry Int'l Trade, Inc. v. Gov't of Israel*, 532 F. Supp. 901, 905 (S.D.N.Y. 1982), *aff'd*, 689 F.2d 301 (2d Cir. 1982))); *see also* 1 M. Domke, Domke on Commercial Arbitration § 35:1 (3d ed. 2003) (hereinafter "Domke on Commercial Arbitration") ("Limited only by the broad concepts of equity and justice, an arbitrator has a plethora of remedies, both legal and equitable, to choose from in structuring a remedy."). "Additionally, the parties to the arbitration agreement can broaden the remedies available to them under the arbitration agreement by incorporating the rules of an arbitration administering agency." Domke on Commercial Arbitration § 35:2. Here, JAMS Rule 24 provides: "The Arbitrator may grant any remedy or relief that is just and equitable and within the scope of the Parties' Agreement, including, but not limited to, specific performance of a contract or any other equitable or legal remedy." Dkt. No. 67-3.

The award to the Nominees and the Company here fell within the broad authority the parties delegated to the arbitrator. An arbitrator under a broad arbitration provision has even greater power than a court to award relief in favor of Gas and/or the Nominees as third-party beneficiaries of the LLCA. *Benihana, Inc.*, 784 F.3d at 902; *Sperry Int'l Trade*, 689 F.2d at 306 ("Under New York law arbitrators have power to fashion relief that a court might not properly grant."). The arbitrator concluded that Respondent wrongfully denied the Nominees the Preferred Interests to which they were entitled and that, by depriving them of the Preferred Interests while retaining the two vessels, Levona was unjustly enriched at the Nominees' expense. The arbitrator reasoned that the damages "flow[ed] directly from Levona's refusal to relinquish the preferred interests, and the Preferred Nominees hold all title and interest in the preferred interests." Dkt. No. 47-5 at 64. The arbitrator had the authority to hold that the Preferred Interests were transferred to the Nominees and award the Nominees damages. The

Court need not agree with that reasoning to conclude that it was within the arbitrator's power to determine that Levona's breach of its obligations to Petitioners could be most readily and effectively redressed by giving the party most directly injured the benefit the arbitrator found that Respondent unjustly enjoyed. As to the Company, the arbitrator determined that they too were directly injured by the conduct that the arbitrator found violated the LLCA—Levona caused the arrests of the Company's vessels and committed other breaches of contract. If it was within the power of the arbitrator to determine whether Levona breached the LLCA, it follows that it would be within the power of the arbitrator to grant the relief that the arbitrator believed was most effective to redress that breach.

Respondent's arguments to the contrary are without merit. Respondent contends that a non-party to the arbitration agreement that did not participate in the arbitration is not bound by the award rendered in the arbitration. *See, e.g.*, *Ali A. Tamini v. M/V Jewon*, 808 F.2d 978, 981 (2d Cir. 1987); *Dist. Council No. 9 v. APC Painting, Inc.*, 272 F. Supp. 2d 229, 240 (S.D.N.Y. 2003). Respondent's point that the Nominees and the Company were non-parties and that they did not participate in the arbitration has force. Neither the Nominees nor the Company were named as parties. Although representatives of each testified, they did so in their capacity as witnesses, and not in their capacity as parties. The Court has reviewed the arbitration filings and agrees with Respondent that it was not until the pre-hearing brief, months after the arbitration had commenced, that Petitioners asserted that the Preferred Interests should be transferred to the Nominees and not until after the hearing and in its proposed order that Petitioners asked that damages be awarded to Gas and to the Nominees and not to itself.

But that point gets Respondent only so far. Unlike the arbitrator's decision to award relief as against non-parties to the arbitration discussed below, the arbitrator's decision to award

damages to non-parties did *not* "bind nonparties to the arbitration." *Soleimani v. Andonian*, 2022 WL 748246, at *5 (S.D.N.Y. Mar. 10, 2022). It bound Levona, a party to both the arbitration and the underlying contract, to pay damages to non-parties. Accordingly, the award "do[es] not bind the[] non-parties in the sense proscribed by decisional law." *Matter of Arb. Between Cole Pub. Co., Inc. v. John Wiley & Sons, Inc.*, 1994 WL 532898, at *4 (S.D.N.Y. Sept. 29, 1994). Nor does the award "unnecessarily determine the rights of non-parties," as in cases where petitioners sought to confirm awards that benefitted nonparties *without resolving the parties' dispute*. *See, e.g.*, *Techcapital Corp. v. Amoco Corp.*, 2001 WL 267010, at *16 (S.D.N.Y. Mar. 19, 2001).

Respondent also relies upon the Sixth Circuit decisions in *NCR Corp. v. Sac-Co, Inc.*, 43 F.3d 1076 (6th Cir. 1995), *Nationwide Mutual Insurance Co. v. Home Insurance Co.*, 330 F.3d 843, 849 (6th Cir. 2003), and *Armco Employees Independent Federation, Inc. v. AK Steel Corp.*, 149 F. App'x 347 (6th Cir. 2005). None is apposite. In *NCR Corp.*, all parties agreed that the arbitrator exceeded his powers by awarding "class action type relief in a case that was not a class action." 43 F.3d at 1080. One of NCR's authorized dealers asserted a claim in arbitration of unfair competition; the arbitrator not only awarded that dealer punitive damages but also awarded "punitive damages to all of NCR's United States nonservicing dealers even though only one nonservicing dealer . . . was a party to the action before the arbitrator." *Id.* at 1078. In *Nationwide*, the reviewing court had previously determined that the third-party eventually awarded relief could not be a party to the arbitration given its contractual relationship with the parties to the arbitration, and that the only relief available in the arbitration was to the parties before the arbitrator. 330 F.3d at 847 ("In *Nationwide I*, we held that Nationwide could not bring suit directly against CIGNA, or compel CIGNA to submit to arbitration, because of a third-party

disclaimer provision in the assumption contract between Home and CIGNA. We construed this disclaimer provision as a limitation on the obligations CIGNA undertook in its assumption contract with Home. Therefore, Nationwide's only recourse was against Home, and CIGNA and its affiliates were not parties to the arbitration."). The court concluded that the award was in manifest disregard of the law and the Circuit's prior opinion because it purported to adjudicate and create rights that were not the subject of the arbitration. *Id.* Put differently, the court in *Nationwide* held that relief could not be awarded to a third-party because the relevant contracts did not provide for it. *Id.* at 848 ("Thus, the arbitration award unambiguously exceeds the terms of the Nationwide-Home contractual dispute."). Notably, the court did not contest the proposition proffered by the appellee that, if the award was construed, simply to direct relief by which the appellant could discharge its legal obligations, it could be confirmed. *Id.* Finally, in *Armco*, the Sixth Circuit held that the labor arbitrator exceeded his powers by awarding relief in an arbitration brought by the defendant's apprentices who complied with the collective bargaining agreement's grievance procedures also to those apprentices who did not comply with those grievance procedures. *Armco*, 149 F. App'x at 350–52. The court concluded, "[l]imiting relief to those apprentices who properly complied with the group grievance procedure is consistent with the terms of the CBA" and that the arbitrator's award to all apprentices, including those who did not comply with the grievance procedure demonstrated a "clear infidelity" to the collective bargaining agreement because it conflicted not only with the terms of the collective bargaining agreement, but also with "the parties' intent in entering into an agreement that sets forth such detailed provisions for filing grievances." *Id.* at 351–52.

The cases offered by Respondent thus do not stand for the universal proposition that an arbitrator determining a dispute under a broad arbitration agreement lacks authority to grant

monetary relief directly to third parties. In those cases, the arbitrator's award either depended on the determination of the rights of persons who were not parties to the arbitration, or granted relief to parties that a court had previously held could not be awarded relief in the arbitration. In this case, by contrast, the Award did not rest upon a determination that a wrong was committed as against the Company or the Nominees independent of the wrongs committed to Petitioners. It rested upon a determination the rights of Corp and Holdings—including the right to exercise the Purchase Option—were violated and that the payment of monies to the third parties was the most effective means of providing relief. The Award does direct a remedy by which Respondent will "discharge its legal obligations" to Petitioners. *Nationwide*, 330 F.3d at 847. The Award thus cannot be disturbed on the basis that because relief was directed to persons other than the Petitioners the arbitrator exceeded his authority under the arbitration agreement.

2. The Award of Relief Against Non-Parties

Respondent next argues that because Murchinson and Pach Shemen were not parties to the arbitration, the arbitrator could not award relief against them and in favor of Petitioners. Dkt. No. 50 at 22-23; Dkt. No. 59 at 8. For their part, Petitioners assert that they seek *confirmation* of the award only as against Levona, and not against Murchinson or Pach Shemen. Dkt. No. 54 at 13. Petitioners argue that—with respect to the liability of Murchinson and Pach Shemen—the Court should merely confirm the *factual findings* of the arbitrator regarding the roles and actions of Murchison and Pach Shemen, as the issues of the relationship among Levona, Murchinson, and Pach Shemen were before the arbitrator and the arbitrator's findings cannot be revisited by a court on a petition to confirm an award. Dkt. No. 54 at 13. Specifically, the arbitrator based his award of relief against Murchison and Pach Shemen on his conclusion that "Levona, Murchinson, and Pach Shemen, are each alter egos of the other concerning every fact proven in

this matter and every item of relief awarded herein." Dkt. No. 67-58 at 96. As a result, "and for the avoidance of any doubt, any judgments against Levona are also against each alter ego." *Id.*

Respondent's argument has merit. "[A] gateway dispute about whether the parties are bound by a given arbitration clause raises a 'question of arbitrability' for a court to decide." *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002); *see Schneider v. Kingdom of Thailand*, 688 F.3d 68, 71 (2d Cir. 2012) ("The question whether the parties have submitted a particular dispute to arbitration, i.e., the question of arbitrability, is an issue for judicial determination unless the parties clearly and unmistakably provide otherwise." (quoting *Howsam*, 537 U.S. at 83)). "[A]rbitration is simply a matter of contract between the parties; it is a way to resolve those disputes—but only those disputes—that the parties have agreed to submit to arbitration." *First Options of Chi.*, 514 U.S. at 943. Thus, "a decision whether parties other than those formally signatories to an arbitration clause may have their rights and obligations determined by an arbitrator when that issue has not been submitted to him is not within the province of the arbitrator himself but only of the court." *Orion Shipping & Trading Co. v. E. States Petroleum Corp. of Panama, S.A.*, 312 F.2d 299, 301 (2d Cir.), *cert. denied*, 373 U.S. 949 (1963). "[W]here the petitioners contend that they are not 'bound to [the] arbitration agreement, the issue of arbitrability is for the Court in the first instance.'" *Kwatin v. Mason*, 356 F. Supp. 3d 343, 348 (S.D.N.Y. 2018) (quoting *Boroditskiy v. European Specialties LLC*, 314 F. Supp. 3d 487, 493 (S.D.N.Y. 2018)); *see also Nat'l Union Fire Ins. Co. of Pittsburgh v. Stucco Sys., LLC*, 289 F. Supp. 3d 457, 466 (S.D.N.Y. 2018) (stating that "whether [the non-signatory] is to be a party to the [arbitration agreement] is an issue for judicial determination first"); *Boroditskiy*, 314 F. Supp. 3d at 493 (noting that "in cases where a party disputes whether it is bound to an arbitration agreement, the issue of arbitrability is for the Court in the first instance" (quotation

marks omitted)); *Herman Miller, Inc. v. Worth Cap., Inc.*, 173 F.3d 844, (2d Cir. 1999) (summary order) ("The question of 'whether a person is a party to [an] arbitration agreement' is a threshold question to be determined by the court, and not by an arbitrator." (quoting *Interbras Cayman Co. v. Orient Victory Shipping Co.*, 663 F.2d 4, 7 (2d Cir.1981) (per curiam))). Although parties may delegate questions of arbitrability to the arbitrator "so long as the parties' agreement does so by 'clear and unmistakeable' evidence," "before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists." *Henry Schein, Inc.*, 139 S. Ct. at 530 (quoting *First Options of Chi.*, 514 U.S. at 944); *see Pacelli v. Augustus Intel., Inc.*, 459 F. Supp. 3d 597, 605 (S.D.N.Y. 2020). These principles stem from the fact that arbitration is "a creature of contract." *Starke v. SquareTrade, Inc.*, 913 F.3d 279, 288 (2d Cir. 2019); *see AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 351 (2011). "[A]rbitration 'is a matter of consent, not coercion.'" *Stolt-Nielsen*, 559 U.S. at 681 (quoting *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989)). Accordingly, "the FAA does not require parties to arbitrate when they have not agreed to do so." *Volt*, 489 U.S. at 478 (quoting *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 n.12 (1967)); *see also Stolt-Nielsen*, 559 U.S. at 683 (holding that "parties may specify *with whom* they choose to arbitrate their disputes").

There are limited circumstances in which a person who is not party to an arbitration agreement will be bound by an arbitral award. A court upon motion may *compel* a non-signatory to an arbitration agreement to participate in an arbitration. The Second Circuit has recognized five theories for requiring non-signatories to arbitrate: "1) incorporation by reference; 2) assumption; 3) agency; 4) veil-piercing/alter ego; and 5) estoppel." *Thomson-CSF, S.A. v. Am. Arb. Ass'n*, 64 F.3d 773, 776 (2d Cir. 1995); *see also Oriental Com. & Shipping Co. v. Rosseel,*

N.V., 609 F. Supp. 75, 78 (S.D.N.Y. 1985) ("It is within the province of this Court to determine whether Oriental S.A., although not formally a party to the arbitration agreement, should be made a party to the arbitration proceeding in addition to Rosseel and Oriental U.K."). District courts are instructed to "narrowly construe these five theories, each of which is governed by ordinary principles of contract and agency law." *Boroditskiy*, 314 F. Supp. 3d at 493. As such, an "agreement to arbitrate does not bind an agent acting on behalf of a disclosed principal 'unless there is clear and explicit evidence of the agent's intention to substitute or superadd his personal liability for, or to, that of his principal.'" *Veera v. Janssen*, 2005 WL 1606054, at *3 (S.D.N.Y. July 5, 2005) (quoting *Lerner v. Amalgamated Clothing & Textile Workers Union*, 938 F.2d 2, 5 (2d Cir. 1991)).

In addition, a person who is not a party to an arbitration agreement may nonetheless become bound by the arbitrator's award if that person initiates the arbitration or participates, without objection, in the arbitration proceedings. *Cf. Cole Publishing Co.*, 1994 WL 532898, *4 ("[I]t has long been recognized that an arbitration award cannot be enforced against a non-party to the arbitration clause who did not participate in arbitration proceedings."). Although "arbitrators do not have the power to bind a corporation which is not a party to the arbitration or a voluntary participant in the arbitration proceeding," *Am. Renaissance Lines, Inc. v. Saxis S.S. Co.*, 502 F.2d 674, 677 (2d Cir. 1974), they do have the authority to bind a voluntary participant in the arbitration proceeding, *see LGC Cap. Holdings, Inc. v. Julius Klein Diamonds, LLC*, 238 F. Supp. 3d 452, 473 (S.D.N.Y. 2017) (holding that individual non-signatories to an arbitration agreement "waived any right to object to the imposition of personal liability" by participating voluntarily in the proceeding, including by listing themselves in their personal capacity as respondents in the proceeding); *Halley Optical Corp. v. Jagar Int'l Mktg. Corp.*, 752 F. Supp.

638, 639–40 (S.D.N.Y. 1990) (finding waiver of objection to the imposition of personal liability where an individual participated in arbitration in order to ensure a party does not "participate in an arbitration, with the assurance that if it loses it may later challenge whether it had ever agreed to arbitration").

Finally, an alter ego to a participant in an arbitration or a party to an arbitration agreement can also be required to satisfy an arbitral award in the absence of an order compelling a party to arbitrate, or of actual participation in the arbitral proceedings. *See, e.g.*, *Blue Whale Corp. v. Grand China Shipping Dev. Co., Ltd.*, 722 F.3d 488 (2d Cir. 2013). However, in that circumstance, the proper vehicle is not an application under the FAA or the New York Convention to confirm the award issued in connection with a proceeding in which the third party did not participate and was not compelled to participate. An award against a person who is not a party to an arbitration agreement or who has not participated either voluntarily or by compulsion in an arbitration proceeding cannot be confirmed. The award may be confirmed only to the extent that it orders relief against a party or a participant. If the prevailing party seeks to hold the alter ego responsible for the relief awarded by the arbitrator, it must do so through a separate action in court to pierce the corporate veil. *See GE Transp. (Shenyang) Co. v. A-Power Energy Generation Sys., Ltd.*, 2016 WL 3525358, at *6 (S.D.N.Y. June 22, 2016); *APC Painting, Inc.*, 272 F. Supp. 2d at 240 ("[C]ase law is clear that in the commercial arbitration context the corporate veil cannot be pierced as part of a motion to confirm the arbitration award." (citing *Productos Mercantiles E Endustriales, S.A. v. Faberge USA, Inc.*, 23 F.3d 41, 46–47 (2d Cir. 1994))); *see also Orion Shipping & Trading Co.*, 312 F.2d at 301 ("It may well be . . . that Eastern Panama is thoroughly dominated by Signal, and that Signal is properly accountable on an 'alter ego' theory. But we hold that an action for confirmation is not the proper time for a

District Court to 'pierce the corporate veil.'"). "[T]he question of whether a third party not named in an arbitral award may have that award enforced against it under a theory of alter-ego liability . . . is one left to the law of the enforcing jurisdiction, here the Southern District of New York, under the terms of Article III of the New York Convention," *CBF Industria de Gusa S/A v. AMCI Holdings, Inc.*, 850 F.3d 58, 74 (2d Cir.), *cert. denied*, 583 U.S. 1039 (2017), in which the Court applies the federal common law of veil piercing, *see, e.g.*, *Global Gaming Philippines, LLC v. Razon*, 2023 WL 5935640 (S.D.N.Y. Sept. 12, 2023).[21]

The arbitrator thus exceeded his authority when he ruled that Pach Shemen and Murchinson were required to pay damages to Levona. *See Orion Shipping & Trading Co.*, 312 F.2d at 300 (concluding that the district court "held, properly we think, the arbitrator exceeded his powers in determining the obligations of a corporation which was clearly not a party to the arbitration proceeding, and that Signal's motion to vacate the award against it should be granted"); *Porzig*, 497 F.3d at 140–41 (vacating arbitral award of relief against a non-party to the arbitration after stating that "[t]he authority of the arbitral panel is established only through the contract between the parties who have subjected themselves to arbitration, and a panel may not exceed the power granted to it by the parties in the contract"). Here, only Levona—not Murchinson or Pach Shemen—was party to the LLCA, which contained the arbitration provision that Petitioners invoked. There is no dispute that Murchinson and Pach Shemen did not agree to the LLCA, were not signatories to the LLCA, were not parties to the LLCA, and were not bound

[21] "An alter ego relationship is not easy to establish," and exists "only where the instrumentality is so extensively controlled that a relationship of principal and agent is created or where affording the entity separate juridical status would work fraud or injustice." *Esso Expl. & Prod'n Nigeria Ltd. v. Nigerian Nat'l Petroleum Corp.*, 40 F.4th 56, 59 (2d Cir. 2022); *Gater Assets Ltd. v. AO Moldovagaz*, 2 F.4th 42, 55 (2d Cir. 2021) (same). Common ownership and control is not enough. *See, e.g.*, *Thomson-CSF*, 64 F.3d at 788.

by the LLCA. Murchinson and Pach Shemen were thus also not bound by the arbitration provision in the LLCA. There also is no evidence or argument that Levona had the authority to bind Murchinson or Pach Shemen to the LLCA. The arbitrator had no authority to make Murchinson or Pach Shemen parties to the arbitration and, even if he did, he did not exercise that authority. Petitioners did not seek an order from a court compelling non-signatories Murchinson or Pach Shemen to participate in the arbitration under the LLCA. Petitioners never claimed that Murchinson or Pach Shemen were required to participate in the arbitration under a theory of incorporation by reference, assumption, agency, veil-piercing, or estoppel. The JAMS Comprehensive Arbitration Rules and Procedures, pursuant to which Eletson and Levona agreed to arbitrate in the LLCA, Dkt. No. 67-2 § 12.14(a), requires each party to serve on the other a Notice of Claims, "afford[ing] all other Parties reasonable and timely notice of its claims," Dkt. No. 67-3 § 9. None of Eletson's Notice of Claims name Murchinson or Pach Shemen or seek relief against Murchinson or Pach Shemen; Eletson does not claim here that it served Murchinson or Pach Shemen with its Notice of Claims. Indeed, the Third Amended Statement of Claims and Response to Counterclaims which was the basis of Eletson's claims in the arbitration names only Levona; it does not name Pach Shemen or Murchinson, seek to compel them to participate in the arbitration, or seek relief against them. Dkt. No. 31-35. Among other things, Petitioners sought as relief "the damages that they have suffered because of Levona's unlawful conduct together with punitive damages and attorneys' fees and costs." *Id.* ¶ 6(e). Indeed, it was not until after the hearing had concluded that Petitioners asked the arbitrator to award any relief against Pach Shemen and Murchinson and even then it did not do so by serving Murchinson or Pach Shemen with papers or seeking to bring them in to the arbitration. Snuck into the second page of Petitioners' post-hearing proposed order was the request that Murchinson

and Pach Shemen (along with hedge funds Nomis Bay and BPY) should be found to be alter egos of Levona and responsible for "every item of relief awarded herein." Dkt. No. 67-47 at 2. Tellingly, even then, the proposed order asked only that Levona pay damages.[22] *Id.* at 6–7. But, by that point the hearing was over. Pach Shemen and Murchinson had no notice prior to the hearing that they may ultimately be deemed liable in the proceedings, no opportunity to be heard, and no opportunity to defend themselves. Their rights were adjudicated without affording them any opportunity to be heard.

The Court therefore vacates the portions of the Award that purport to find Murchinson and Pach Shemen liable, or that require them to pay damages to Petitioners, the Company, or the Nominees. Section 11 of the FAA gives the court the power to modify or correct an award on the ground that "the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matters submitted." 9 U.S.C. § 11. The power is discretionary, and not mandatory. *See Sociedad Armadora Aristomenis Panama, S.A. v. Tri-Coast S.S. Co.*, 184 F. Supp. 738, 741 (S.D.N.Y. 1960); *see also Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 197–98 (2000). In the alternative, the FAA gives the Court the power to vacate an award on the grounds that the arbitrator exceeded his power. 9 U.S.C. § 10(a)(4); *see Smarter Tools*, 57 F.4th at 381–82. In this case, it is an appropriate exercise of discretion to modify the Award and not to vacate it in its entirety. The questions of whether Levona was liable to Eletson and whether Levona could be held responsible under the LLCA for the conduct of Murchinson and Pach Shemen were before the arbitrator. That the arbitrator exceeded his powers in ordering relief directly against Murchinson and Pach

[22] The Award, which recites that Levona, Murchinson, and Pach Shemen, pay compensatory and punitive damages and attorney's fees, costs, expenses, and interest, as alter egos, jointly and severally, Dkt. No. 67-58 at 99-100, exceed the relief requested by Eletson.

Shemen—because they were not signatories to the LLCA and were not parties to the arbitration—does not alone relieve Levona from liability for its role in the conduct of those entities.

Petitioners do not dispute that Pach Shemen and Murchinson cannot be bound as parties to the Award. They respond only that the Court should confirm "the factual findings involving the rules and actions of Murchinson and Pach Shemen, as these issues were arbitrated and submitted to Justice Belen for adjudication." Dkt. No. 54 at 13. That argument, however, is a non-sequitur. Under the New York Convention and the FAA, the Court does not confirm "factual findings." As Eletson itself emphasizes, the Court "cannot revisit or question the fact finding . . . that produced a challenged arbitration award." Dkt. No. 54 at 14 (citing *PDV Sweeny, Inc. v. Conocophillips Co.*, 670 F. App'x 23, 24 (2d Cir. 2016) (summary order)). It confirms an arbitral award. *Diapulse Corp. of Am. v. Carba, Ltd.*, 626 F.2d 1108, 1110 (2d Cir. 1980). A portion of the Award here, if confirmed in its entirety, would direct Murchinson and Pach Shemen to pay damages. And whether Pach Shemen and Murchinson are liable to pay damages was not a question submitted to Justice Belen for decision. Thus, it is no answer to say that Pach Shemen and Murchinson can raise their arguments in an action by Petitioners for enforcement. Petitioners have not demonstrated that they are entitled to an Award confirmed against Murchinson and Pach Shemen and Respondent has shown that that portion of the Award must be vacated. It may be that Petitioners could have obtained an order compelling Murchison and Pach Shemen to participate in the arbitration even though they were not signatories to the LLCA. Eletson may yet have the opportunity to seek to hold Murchinson and Pach Shemen responsible for Levona's obligations under the Award. But, not having sought to make Murchinson or Pach Shemen a party to the arbitration, they must do so through a separate action

for veil-piercing. They may not do so through findings and an award as to which Murchinson and Pach Shemen had no opportunity to be heard.

C. Arbitration of Claims Barred by the Bankruptcy Stay

Respondent argues that the arbitrator violated the Lift Stay Order and the bankruptcy stay by determining that the Preferred Interests had been assigned to the Nominees and by awarding damages based on the alleged bad faith bankruptcy filing. Dkt. No. 50 at 25–27. Petitioners respond that the arbitrator acted within his authority under the Lift Stay Order and that Respondent has waived any claim based on the arbitrator's failure to operate within the confines of that order by not raising any issue until after the arbitration record closed and then only with respect to the fee award. Petitioners suggest that the claim for violation of the Status Quo Injunction was pending before April 17, 2023 because the issue of the bankruptcy filing having been made in bad faith was the subject of correspondence and motion practice before the arbitrator in March 2023, and because the arbitrator himself stated that the filing of the involuntary petition may have been a violation of the Status Quo Injunction. Thus, Petitioners argue that the violation of the Status Quo Injunction was not a new claim but an issue relating to a preexisting order of the Tribunal. Dkt. No. 54 at 19.

The arbitrator's exercise of authority did not violate the automatic stay or the Lift Stay 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. "Section 362 of the Bankruptcy Code provides that the filing of a bankruptcy petition creates an automatic stay against 'the commencement or continuation . . . of a judicial, administrative, or other action or proceeding *against the debtor* that was or could have been commenced before the commencement of the case.'" *Rexnord Holdings, Inc. v. Bidermann*, 21 F.3d 522, 527 (2d Cir. 1994) (quoting 11 U.S.C. § 362(a)(1)). "The general purpose" underlying

the provision "is to grant complete, immediate, albeit temporary relief to the debtor from creditors, and to prevent dissipation of the debtor's assets before orderly distribution to creditors can be effected." *S.E.C. v. Brennan*, 230 F.3d 65, 70 (2d Cir. 2000) (quoting *Penn Terra Ltd. v. Dep't of Envtl. Res.*, 733 F.3d 267, 271 (3d Cir. 1984)). For this reason, "any proceedings or actions described in section 362(a)(1) are void and without vitality if they occur after the automatic stay takes effect." *Rexnord Holdings*, 21 F.3d at 527. However, "the automatic stay is inapplicable to suits *by* the bankrupt 'debtor,' as he is now called." *Martin-Trigona v. Champion Fed. Sav. & Loan Ass'n*, 892 F.2d 575, 577 (7th Cir. 1989); *see also Koolik v. Markowitz*, 40 F.3d 567, 568 (2d Cir. 1994) (per curiam) ("[T]he automatic stay is applicable only to proceedings 'against' the debtor."); *In re Berry Ests., Inc.*, 812 F.2d 67, 71 (2d Cir. 1987) (holding that the automatic stay did not apply to state court actions brought by the debtor); *Assoc. of St. Croix Condo. Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 448 (3d Cir. 1982) ("Section 362 by its terms only stays proceedings against the debtor."). Even if it would have an adverse impact on the property of the bankruptcy estate, an action against a third party is not subject to the automatic stay unless it is "legally certain[] to impact estate property." *Picard v. Fairfield Greenwich Ltd.*, 762 F.3d 199, 208 (2d Cir. 2014). [23]

[23] The automatic stay does not "implicate mere ministerial acts performed by the clerk following the completion of the judicial function," but does prevent the court from making any "judicial decisions . . . after the filing of petitions in bankruptcy." *Rexnord Holdings,* 21 F.3d at 528; *see In re Fogarty*, 39 F.4th 62, 77 (2d Cir. 2022) ("The 'ministerial act' exception represents an exceedingly narrow category of actions that avoid the automatic stay."). Petitioner does not argue that the act of confirmation under the New York Convention and the FAA is merely ministerial.

Neither Eletson's claims nor the Award violated the automatic stay.[24] Through the arbitration, Eletson sought a declaration and determination that it had complied with all of the obligations necessary to complete the option and that the option was exercised and completed on March 11, 2022, Dkt. No. 31-35 at 23, and that Levona be ordered to transfer any preferred shares it was found to have to Eletson, *id.* at 24. Eletson did not assert claims against Holdings. Moreover, although Eletson's claims included "factual allegations" regarding the election of the Nominees that might overlap in any fraudulent conveyance action that the Trustee in the Holdings' bankruptcy case or another party would choose to bring in the future to recover assets of the estate, the "legal bases" for Eletson's claim in the arbitration is "independent" of any such claim and do not "depend in substance" on the question whether Eletson or Holdings may have wrongfully transferred its interest in the option to the Nominees. *Picard*, 762 F.3d at 209. Thus, Levona cannot use the automatic stay—a statutory safeguard "intended to protect the debtor and to assure equal distribution among creditors"—as "a weapon against the estate." *Winters ex rel. McMahon v. George Mason Bank*, 94 F.3d 130, 135 (4th Cir. 1996) (quoting *In re Globe Inv. & Loan Co.*, 867 F.2d 556, 560 (9th Cir. 1989)); *see also Leeber Realty LLC v. Trustco Bank*, 2019 WL 498253, at *11 (S.D.N.Y. Feb. 8, 2019) ("Because the automatic stay's primary purpose is to preserve a bankrupt's estate for the benefit of all creditors, courts consistently hold that actions

[24] Eletson argues that Levona waived its rights to complain that the arbitrator exceeded his authority because it raised the issue about which it complains with the bankruptcy court in May 2023, but then did not file additional motions for relief. Dkt. No. 54 at 20. That argument is without merit. Levona moved to strike Eletson's allegations that the Preferred Interests had been transferred to the Nominees or, in the alternative, to dismiss Eletson's claims. Dkt. No. 31-37.

brought *by* a debtor are not subject to the automatic stay."), *aff'd*, 798 F. App'x 682 (2d Cir. 2019) (summary order).[25]

While Eletson sought an order compelling Levona to transfer to Eletson any preferred shares it was found to have, Dkt. No. 67-24 at 23, that request is more accurately understood as a demand that the arbitrator order Levona to turn over the Preferred Interests to the Company or whomever, under the BOL, the Company elected as its nominees. As Eletson has argued, the question regarding the identity of the recipient of the preferred shares would be a matter of indifference to Levona in its capacities as contractual counterpart under the LLCA and the BOL. If the Company did in fact exercise its option to buy Levona's preferred shares as the arbitrator found, the Company had the sole authority, without any input by Levona, to determine who should receive the preferred shares. Levona, which, pursuant to the arbitrator's findings, no longer had control over the Company, had no interest in the matter.

For all of those reasons, Levona is mistaken in its argument that the arbitrator improperly usurped the powers of the bankruptcy court by determining that Eletson had properly exercised the option and that, as a result, the Nominees were entitled to the Preferred Interests. Nor will this Court have violated the Automatic Stay by confirming the Award. The Award, by its terms, only declares that "Eletson effectively exercised the buyout option granted in the Binding Offer Letter," that "as of March 11, 2022, . . . Levona had no membership interest in" the Company, that the Company "exercised its rights under *the BOL* to nominate three entities—Fentalon, Apargo, and Desimusco, (the Preferred Nominees)—affiliated with the principals of Claimants,

[25] Levona's counterclaims against Eletson arguably did constitute an action against the debtor. *See Koolik*, 40 F.3d at 568 (holding that "a counterclaim against a plaintiff who becomes a bankruptcy debtor is an 'action or proceeding against the debtor' within the meaning of § 362(a)(1), notwithstanding the fact that the plaintiff initiated the lawsuit"). However, the bankruptcy court permitted those claims to go forward.

as the parties to receive the preferred interests in the Company," and that "[t]he preferred interests in the Company were transferred to the Preferred Nominees, effective as of March 11, 2022, and the Preferred Nominees are permitted transferees *under the LLCA*." Dkt. No. 47-5 at 96–97 (emphasis added). In short, the arbitrator adjudicated claims only as between Eletson and Levona and only under the BOL and LLCA. The arbitrator did not purport to address the questions—now raised by Levona—whether the Company or Holdings improperly elected the Nominees or whether the transfer to the Nominees of the Company's right to the Preferred Interests effected a fraud on the creditors of Holdings and the arbitrator's findings can have no collateral estoppel effect on those questions. *See* Restatement (Second) of Judgments § 84 cmt. c (1982) ("Giving claim preclusive effect to an arbitration award does not necessarily imply that such an award should also be given issue preclusive effects. It is coherent to treat an arbitration proceeding as wholly self-contained, conclusive as to the claims represented in the award but inoperative beyond them."). It therefore did not intrude on the authority of "the bankruptcy court to centralize all disputes concerning property of the debtor's estate so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas." *In re U.S. Lines, Inc.*, 197 F.3d 631, 640 (2d Cir. 1999), *cert. denied*, 529 U.S. 1038 (2000). The arbitrator's actions did not "dissipate estate assets or interfere with the trustee's orderly administration of the estate." *In re Fogarty*, 39 F.4th at 71 (quoting *Picard*, 762 F.3d at 207). The arbitrator did not "decide whether claims belonging to a debtor are property of the bankruptcy estate." Dkt. No. 38 at 2. The issues the bankruptcy court will have to decide were not before the arbitral proceedings nor was it necessary for the arbitrator to decide whether the election by Eletson that the Preferred Shares go to the Nominees rather than to the Company effected a fraud on the creditors of Holdings. Those issues therefore remain open for the bankruptcy court to decide.

See Global Gaming Phillipines, 2023 WL 5935640, at *3–4 (stating standards for application of issue preclusion to arbitral findings); *see also* Restatement (Second) of Judgments §§ 27, 84 (1982).

Thus, by confirming the arbitral award, the Court also will not intrude on the bankruptcy court's exclusive authority to decide what is property of the estate. *See Universal Well Servs., Inc. v. Avoco Nat. Gas Storage*, 222 B.R. 26, 30 (W.D.N.Y. 1998) ("[T]he decision as to what is and is not 'property of the estate' lies within the exclusive jurisdiction of the bankruptcy court."). As Eletson itself has emphasized, the Court's role on a petition to confirm an arbitral award is "very limited." Dkt. No. 54 at 5 (quoting *LiveWire Ergogenics, Inc. v. JS Barkats PLLC*, 645 F. Supp. 3d 290, 297 (S.D.N.Y. 2022)). The confirmation of an arbitration award "ordinarily is 'a summary proceedings that merely makes what is already a final arbitration award a judgment of the court.'" *Citigroup, Inc. v. Abu Dhabi Inv. Auth.*, 776 F.3d 126, 132 (2d Cir. 2015) (quoting *D.H. Blair & Co.*, 462 F.3d at 110); Jay E. Grenig, Int'l Com. Arb. § 13:1 (Hilary Shroyer ed., 2023) ("Once a court has confirmed an award and reduced it to a judgment, a party may then seek a court in any Convention country with jurisdiction over the assets of the losing party that can be executed on to satisfy a money judgment. Finding such a court, the prevailing party may take the award that has been confirmed and reduced to a judgment, and petition the new court for recognition and enforcement."). The Court does not review the merits of the dispute and must "confirm an arbitration award unless it concludes that one of the enumerated grounds for refusing to enforce the award is present." *Citigroup*, 776 F.3d at 132 n.4 (internal citations and quotation marks omitted). Eletson has stated that it "intends to return to the Bankruptcy Court following this Court's ruling on confirmation and will prove then that the Arbitral Award does not even arguably involve property belonging to Holdings's estate." Dkt. No. 33 at 3; *see also*

Dkt. No. 35 at 3 ("Eletson intends to return to the Bankruptcy Court following this Court's confirmation ruling, to address enforcement issues."). It is in that forum, in the first instance, that the Court can address the timing of the election by Eletson that the Preferred Interests should go to the Nominees and whether the Preferred Interests should be considered to be property of the estate or should be clawed back or avoided.[26] *See Stone Container Corp. v. Tradeway Int'l Corp.*, 1994 WL 184661, at *3 (S.D.N.Y. May 12, 1994) ("[T]he issue of preferential transfers is properly an issue for the Bankruptcy Court to consider. Therefore, the Court [will not] rule on the alleged transfers.").

For similar reasons, the prosecution of the violation of the Status Quo Injunction also did not violate the automatic stay. That claim was leveled by Eletson against Levona. *See Koch v. Preuss*, 2020 WL 1304084, at *3 (S.D.N.Y. Mar. 18, 2020). It did not intrude upon the assets of the bankruptcy estate. *See Martin-Trigona*, 892 F.2d at 577. It could be argued that Eletson—by asking at the last minute that damages be paid to the Company and not to itself—transferred a claim that belonged to the estate or an entity owned by the estate to a non-debtor and that the damages awarded to the Company should instead be for the benefit of the creditors of Holdings, but the Court need not now address that issue (if it ever needs to be addressed). The arbitrator had before him no issue with respect to the rights as between Holdings and the Company, and no order this Court will issue confirming the award thus could affect the rights as between Holdings and the Company.

[26] *Marquis Yachets v. Allied Marine Grp., Inc. (North)*, 2010 WL 1380137 (D. Minn. Mar. 31, 2010), upon which Levona relies, is distinguishable. In that case, the court held that an arbitration panel exceeded its powers by deciding rather than staying claims in an arbitration brought against the debtor, not by the debtor, but nonetheless declined to modify the arbitration award because the panel was acting within its powers by continuing the arbitration award on claims to which the stay did not apply.

Finally, the Award of the Preferred Interests to the Nominees and damages to the Company for violation of the Status Quo Injunction does not violate the Lift Stay Order or the automatic stay. First, with respect to the Lift Stay Order, that order, by its terms, does not purport to "expand the scope" of the automatic stay. *Picard*, 762 F.3d at 207. Its language is permissive, not restrictive. The Bankruptcy Court stated:

> The automatic stay under section 362(a) of the Bankruptcy Code is hereby modified with respect to the Arbitration solely to the extent necessary and for the sole purpose of permitting a trial, any related pre-trial proceedings (including any remaining discovery), any related post-trial proceedings or briefing, and a final determination or award to be made by the arbitrator, including any appeals, with respect to the claims currently pending in the Arbitration.

Dkt. No. 67-35 at 4. The Lift Stay Order does not restrict Eletson from pursuing any action beyond the ambit of the automatic stay. In any event, the word "claims" is capacious. It refers to "[a] demand for money, property, or a legal remedy to which one asserts a right." *Claim*, Black's Law Dictionary (10th ed. 2014); *see In re Bridge Const. Servs. of Fla., Inc.*, 140 F. Supp. 3d 324, 334 n.5 (S.D.N.Y. 2015) (same); *Am. Ins. Ass'n v. Del. Dep't of Ins.*, 2008 WL 44322, at *4 (Del. Sup. Ct. Jan. 2, 2008) (same); *see also Goldstein v. N.J. Tr. Co.*, 39 F.R.D. 363, 366 (S.D.N.Y. 1966) (defining the word "claim" as it appears in Federal Rule of Civil Procedure 12(b)(6) to mean "the aggregate of operative facts which give rise to aa right enforceable in courts").

In sum, neither the arbitration nor the present proceeding infringed upon the automatic stay or Lift Stay Order.

D. Award of Fees Incurred in the Bankruptcy Case and the Bondholder Litigation

Next, Respondent challenges the arbitrator's award of damages for violations of the Status Quo Injunction. Dkt. No. 50 at 27–31. The arbitrator identified what he characterized as three intentional violations of the Status Quo Injunction that collectively caused quantifiable

harm: (1) Pach Shemen's purchase of a controlling interest of the outstanding bonds issued by Holdings—amounting to $183,851,546 in face value—for $2,000,000 on January 4, 2023; (2) Pach Shemen's directing of the trustee to commence litigation against Holdings on January 11, 2023, after Pach Shemen purchased the bonds; and (3) Pach Shemen's directing of the commencement of the involuntary bankruptcy petition against Holdings on March 7, 2023, again after purchasing the bonds. Dkt. No. 67-58 at 60; *see also id.* at 98–99 (finding that Levona violated the Status Quo Injunction by "[d]irecting and/or causing Levona's affiliates to purchase a controlling position in securities of . . . Holdings in January 2023 for the purpose of wrongfully commencing and then actually causing the commencement of litigation against . . . Holdings and the filing an involuntary bankruptcy petition against . . . Holdings"). The arbitrator did not find that the acquisition of the bonds by Pach Shemen alone would have violated the Status Quo Injunction, nor is the basis for any such finding apparent from the record. Rather, the arbitrator concluded that through these actions together, "the Levona-related entities were looking to either strip this arbitration of its jurisdiction or hedge against a potential loss in this arbitration." *Id.* at 61.[27] The arbitrator recognized that Pach Shemen's actions "technically" did not effect a transfer or attempted transfer or sale of the assets of the Company or of the assets in dispute in the arbitration, but he concluded that the "overall strategy was intended to disrupt the status quo and find another path to obtain the 'assets of [the Company] . . . or assets in dispute in this arbitration.'" *Id.* He also recognized that Pach Shemen was not bound by the Status Quo Injunction but he found that "Pach Shemen is the alter ego of Levona" and certain of the

[27] The arbitrator did not identify what would be wrongful about Levona hedging against a potential loss in the arbitration. Nor did the arbitrator award any compensatory damages arising out of the purchase of the bonds themselves—the compensatory award for breach of the Status Quo Injunction was based on fees and costs incurred during the bondholder litigation and the involuntary bankruptcy proceeding.

individuals who acted on behalf of Pach Shemen also were bound by the Status Quo Injunction. *Id.*

Consequently, the arbitrator awarded Petitioners $3,007,266.20 in fees and costs incurred by Petitioners in connection with the bondholder litigation against Holdings and the involuntary bankruptcy of Holdings that the arbitrator concluded Pach Shemen directed to be commenced in violation of the Status Quo Injunction, to be paid jointly and severally by Levona, Murchinson, and Pach Shemen to the entities or individuals who paid those costs and fees. Dkt. No. 67-58 at 91, 100. The arbitrator concluded that the attorneys' fees were damages "to compensate for the intentional violations by Levona, through its alter ego, Pach Shemen, of the Status Quo Injunction . . . ." *Id.* at 92. The arbitrator also based his award of punitive damages in the amount of $43,455,122.21, equal to the amount of compensatory damages, in part on what he concluded were violations of the Status Quo Injunction. *Id.* at 74.

The arbitrator lacked the power to enjoin Pach Shemen from filing the involuntary bankruptcy petition and the bondholder litigation or Levona from assisting in filing those actions and his award of damages for those actions thus exceeded his authority under the LLCA and under the law. *See Jock*, 942 F.3d at 622 (an arbitrator exceeds her authority by "considering issues beyond those the parties have submitted for her consideration [or] reaching issues clearly prohibited by law or by the terms of the parties' agreement"). The arbitration clause at issue, though broad, was not unlimited. It bound only the parties to the LLCA and applied only to disputes, claims or controversies "arising out of or relating to [the LLCA] or the breach, termination, enforcement, interpretation or validity thereof." Dkt. No. 67-2 § 12.14(b). It empowered the arbitrator to grant injunctive or other forms of equitable relief but only "(i) to preserve such party's rights pending a final resolution on the merits or (ii) that prevails in any

such arbitration." *Id.* § 12.14(c). Rule 24(e) of the JAMS Rules, to which the parties consented, gives the arbitrator the authority to grant "whatever interim measures are deemed necessary, including injunctive relief and measures for the protection or conservation of property and disposition of disposable goods." Dkt. No. 67-3 at 15. The JAMS Comprehensive Arbitration Rules and Procedures, in Rule 29, give the arbitrator the power to "order appropriate sanctions for failure of a Party to comply with its obligations under any of these Rules or with an order of the Arbitrator." *Id.* at 17.[28] As long as it is consistent with the arbitral agreement. an arbitrator has the authority to grant "interim relief in order to maintain the status quo." Domke on Commercial Arbitration § 35:4 (citing *Next Step Med. Co. v. Johnson & Johnson Int'l*, 619 F.3d 67 (1st Cir. 2010); *Charles Constr. Co. v. Derderian*, 586 N.E.2d 992 (Mass. 1992)). An arbitrator also "possesses the inherent authority to preserve the integrity of the arbitration process to which the parties have agreed." *On Time Staffing, LLC v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 784 F. Supp. 2d 450, 455 (S.D.N.Y. 2011).

The arbitrator's powers to issue injunctions, however, also are not unlimited. As a general matter, only under limited circumstances may even a court prevent a party from litigating a dispute in another court and thus intrude upon the second court's jurisdiction. "[T]he Supreme Court has recognized that '[t]he right of access to the courts is . . . one aspect of the right to petition' the government for a redress of grievances secured by the First Amendment to the Constitution." *Sherman v. Fivesky, LLC*, 2020 WL 5105164, at *5 (S.D.N.Y. Aug. 31, 2020) (quoting *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972)). Accordingly, federal courts themselves have circumscribed power to enjoin a party from availing

[28] Those sanctions may include assessment of any "costs occasioned by the actionable conduct, including reasonable attorneys' fees." Dkt. No. 67-3 at 17.

itself of its right to seek judicial relief. In particular, a federal court has the power to "protect its ability to carry out its constitutional functions against the threat of onerous, multiplicitious, and baseless litigation," by enjoining a litigant's right to file actions in federal court. *Abdullah v. Gatto*, 773 F.2d 487, 488 (2d Cir. 1985) (per curiam); *see In re Martin-Trigona*, 737 F.2d 1254, 1262–63 (2d Cir. 1984) (affirming injunction against filings in the District of Connecticut and requiring that Martin-Trigona inform other federal courts of the injunction and obtain leave of court but vacating injunction to the extent that it prevented Martin-Trigona from filing actions in state court). In addition, under the first-filed rule, "a district court 'may enjoin the suitor in [a] more recently commenced case from taking any further action in the prosecution of that case' if the claims presented in the second action should have been interposed as compulsory counterclaims to the claims in the suit pending before it." *Comput. Assocs. Int'l., Inc. v. Altai, Inc.*, 893 F.2d 26, 28–29 (2d Cir. 1990) (quoting *Nat'l Equip. Rental, Ltd. v. Fowler*, 287 F.2d 43, 45 (2d Cir. 1961)); *see Tropic Techs., Inc. v. Vendr, Inc.*, 2023 WL 2535215, at *5 (S.D.N.Y. Mar. 15, 2023).

But while courts do have the authority "to enjoin foreign suits by persons subject to their jurisdiction," that authority may only "be used sparingly and . . . only with care and great restraint." *China Trade & Dev. Corp. v. M.V. Choong Yong*, 837 F.2d 33, 35–36 (2d Cir. 1987) (internal citations and quotation marks omitted). It may only be used when (1) the parties are the same in both matters, and (2) resolution of the case before the enjoining court is dispositive of the matter to be enjoined. *Id.*; *see LAIF X SPRL v. Axtel, S.A. de C.V.*, 390 F.3d 194, 199 (2d Cir. 2004); *Paramedics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 652 (2d Cir. 2004). Even then, a court may not enjoin a party from seeking relief from another court without also weighing "(1) the threat to the enjoining court's jurisdiction posed by

the foreign action; (2) the potential frustration of strong public policies in the enjoining forum; (3) the vexatiousness of the foreign litigation; (4) the possibility of delay, inconvenience, expense, inconsistency, or a race to judgment; and (5) other equitable considerations." *Eastman Kodak Co. v. Asia Optical Co., Inc.*, 118 F. Supp. 3d 581, 586 (S.D.N.Y. 2015); *see also China Trade*, 837 F.2d at 35. If the foreign proceeding poses no threat to the enjoining court's jurisdiction and will not frustrate the strong public policies of the enjoining forum or otherwise undermine the integrity of proceeding before the enjoining forum, no injunction is appropriate. "[O]ur legal system generally relies on principles of *stare decisis* and comity among courts to mitigate the sometimes substantial costs of similar litigation" involving different parties. *Smith v. Bayer Corp.*, 564 U.S. 299, 317 (2011).[29]

Of particular relevance here, a court has the authority to enjoin a party to an international arbitration agreement from initiating or maintaining litigation before another court only if the arbitration agreement is enforceable, the party being enjoined is bound by the arbitration agreement, the claims to be enjoined are within the scope of the arbitration agreement, and issuance of the injunction is appropriate upon consideration of a number of factors, including which court has the greater interest in ruling on the enforceability of the arbitration agreement. Restatement (Third) of the U.S. Law of Int'l Com. Arb. § 2.29 (Am. L. Inst., Tentative Draft No. 2, 2012); *cf. Amaprop Ltd. v. Indiabulls Fin. Servs. Ltd*, 2010 WL 1050988 (S.D.N.Y. Mar. 23, 2010) (weighing *China Trade* factors to determine whether to award an anti-suit injunction against litigation in India in favor of arbitration); *Paramedics Electromedicina Comercial, Ltda.*, 369 F.3d at 680–81 (weighing *China Trade* factors in reviewing district court's anti-suit

[29] *Smith v. Bayer* itself involved suits by different plaintiffs, each members of a putative (non-certified) class. The proposition it relied upon, however, is generally applicable to suits involving different parties or different sets of issues, and not just different plaintiffs.

injunction against litigation in Brazil in aid of arbitration); *T-Jat Sys. 2006 Ltd. v. Amdocs Software Sys. Ltd.*, 2013 WL 6409476, at *4 (S.D.N.Y. 2013) (weighing *China Trade* factors and enjoining respondents and their officers and representatives from bringing action in Israel that would interfere with New York arbitral proceedings); *Stolt Tankers BV v. Allianz Seguros, S.A.*, 2011 WL 2436662, at *5 (S.D.N.Y. June 16, 2011) (weighing *China Trade* factors and enjoining respondents from pursuing action in Brazil in light of agreement to arbitrate in New York). *But see Telenor Mobile Commc'ns AS v. Storm LLC*, 524 F. Supp. 2d 332, 363–64 (S.D.N.Y. 2007) (Lynch, J.), *aff'd on other grounds*, 584 F.3d 396 (2d Cir. 2009) (holding that where an arbitral body itself enters an anti-suit injunction "the proper inquiry is whether the parties agreed to give the arbitrators the power to enter such an injunction" and that when the parties give broad authority to the arbitrator "the applicable test for arbitral jurisdiction is not whether the preconditions of *China Trade* are satisfied, but whether the arbitral award 'touch[es] matters' within the contract" (quoting *ACE Cap. Re Overseas Ltd. v. Cent. United Life Ins. Co.*, 307 F.3d 24, 26–28 (2d Cir. 2002))).

Petitioners request, however, that this Court hold that they could obtain relief from a private arbitrator—in aid of the arbitration—would far exceed the limited relief that a court would be authorized to grant Petitioners. On Petitioners' argument, the arbitrator had the authority to enjoin the filing of lawsuits by persons who were not parties to the arbitration, to vindicate rights that were not subject to the arbitration, in proceedings that would not adjudicate issues presented in the arbitration, and that would in no way interfere with the integrity of the arbitration or prevent the arbitrator from issuing his award. The Court concludes that the arbitrator had no such authority.

Starting with the involuntary bankruptcy petition, the arbitrator's powers did not extend to enjoining the filing of an involuntary petition even by Levona, much less by Pach Shemen, a party who was not before the arbitral panel. Under the Bankruptcy Code, both the debtor and a creditor have a near absolute right to file a petition for relief. *United States v. Royal Bus. Funds Corp.*, 724 F.2d 12, 15 (2d Cir. 1983) (citing the general rule "that a debtor may not agree to waive the right to file a bankruptcy petition"); *In re Project Restore, LLC*, 2022 WL 6233552, at *6 (Bankr. M.D. Tenn. Oct. 7, 2022) ("From the Court's standpoint, a creditor cannot contract away its right as a petitioner in an involuntary case any more than a debtor can contract away its right to file a voluntary bankruptcy."). The reasons why a debtor cannot be understood, in a bilateral agreement, to have contracted away its right to file a voluntary bankruptcy petition are self-evident and readily understood. The right to file a bankruptcy petition exists not purely to protect the personal interests of the debtor but also to protect the interests of the community of all of the creditors and the economy generally against the destructive race to the courthouse that would ensue if a single forum were not permitted to adjudicate, all at once, the interests of all with a claim against the debtor. *See Sherwood Partners, Inc. v. Lycos, Inc.*, 394 F.3d 1198, 1203–04 (9th Cir. 2005) ("This is a unique contribution of the Bankruptcy Code that makes bankruptcy different from a collection of actions by individual creditors. In a world of individual actions, each creditor knows that if he waits too long, the debtor's assets will have been exhausted by the demands of the quicker creditors and he will recover nothing. The creditors race to the courthouse, all demanding immediate payment of their entire debt. Like piranhas, they make short work of the debtor, who might have survived to pay off more of his debts with a little bit of reorganization—or at least might have more equitably fed the slower piranhas."); *Israel-British Bank (London) v. Fed. Deposit Ins. Corp.*, 536 F.2d 509, 513 (2d Cir.), *cert.*

denied, 429 U.S. 978 (1976) ("The theme of the Bankruptcy Act is equality of distribution of assets among creditors, and correlatively avoidance of preference to some. The road to equity is not a race course for the swiftest." (internal citations omitted)). For those reasons, the Second Circuit has held, as discussed further below, that the right to file a bankruptcy petition may be waived only in limited circumstances, generally in those circumstances where—as in the case of a receivership—an alternative forum exists that would "accomplish[] what a bankruptcy would[:]" the settlement of all of the claims against a putative debtor. *See S.E.C. v. Byers*, 609 F.3d 87, 92 (2d Cir. 2010); *see also Royal Bus. Funds Corp.*, 724 F.2d at 12 (applying the same rule in context of a consensual court-supervised federal receivership).

The same principles apply in the case of an involuntary petition. The Code gives every creditor the right to file an involuntary bankruptcy petition under Chapter 7 or 11 so long as it is the holder of a claim "that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount," and so long as it is either joined by two other creditors meeting the same criteria and all together holding at least $18,600 in claims or, if there are fewer than twelve creditors, so long as it holds more than $18,600 in claims. 11 U.S.C. § 303(b). The provision ensures that creditors—as well as the debtor—can prevent the destructive race to the courthouse and ensure the orderly disposition of the debtor's assets. "Involuntary bankruptcy petitions help ensure the orderly and fair distribution of an estate by giving creditors an alternative to watching nervously as assets are depleted, either by the debtor or by rival creditors who beat them to the courthouse." *In re Murray*, 900 F.3d 53, 59 (2d Cir. 2018); *see also In re Miles*, 294 B.R. 756, 760 (B.A.P. 9th Cir. 2003) ("A key justification for involuntary cases is as a creditors' remedy that enables creditors who lack the muscle or the luck to extract preferences or unequal transfers from distressed debtors to achieve equitable treatment by invoking the protections inherent in the

trustee's avoiding powers consistent with the principle of ratable recovery for creditors.").[30] Although the Code recognizes that a vexatious creditor or a creditor unknowledgeable about the debtor's financial condition could interfere with the debtor's operations, it balances that risk against the risk that the debtor will not place itself into bankruptcy, creating such balance by permitting the debtor to operate until the court orders otherwise, by allowing the court to require the petitioner to file a bond to indemnify the debtor for costs should the petition be dismissed, and by providing for costs and damages in the event that the petition is dismissed. As Judge Lifland once put it, "[w]hile no doubt an improvidently filed involuntary petition (i.e.: by one without a valid claim) can wreak havoc on an innocent debtor, this potential harm must be juxtaposed with the need to ensure that earnest creditors promptly receive all of the rights and protections afforded by the bankruptcy laws, lest the assets of the estate be squandered and secreted away by a financially troubled or dishonest debtor." *Matter of B.D. Int'l Disc. Corp.*, 15 B.R. 755, 759 (Bankr. S.D.N.Y. 1981). Section 303(i) authorizes the court—if an involuntary petition is dismissed—to grant the debtor judgment against the petitioners for costs or a reasonable attorneys' fees and, if the petition has been filed in bad faith, for compensatory or punitive damages. 11 U.S.C. § 303(i); *see also In re TPG Troy, LLC*, 793 F.3d 228, 235 (2d Cir. 2015) ("When an involuntary petition is dismissed, 'there is a presumption that costs and attorney's fees will be awarded to the alleged debtor.'" (quoting *In re Mountain Diaries*, 372

[30] Originally, under United States law, only creditors, and not the debtor, could file a bankruptcy petition. *See In re Marshall*, 721 F.3d 1032, 1058–59 (9th Cir. 2013) ("Historically, bankruptcy laws have not been conceived in the United States or England for the protection of debtors, whether honest or dishonest. Bankruptcy laws were enacted principally for the benefit of trade and for the protection of creditors, to give them more powers acting in concert to collect debts than they possessed individually. . . . The 1841 Act was the first United States law to authorize a debtor to file a voluntary bankruptcy petition. Neither the 1800 Act nor the English predecessors permitted a voluntary bankruptcy filing.").

B.R. 623, 637 (Bankr. S.D.N.Y. 2007))). "[B]ad faith is not a prerequisite to an award of costs and attorney's fees under § 303(i)(1)." *In re Bayshore Wire Prods. Corp.*, 209 F.3d 100, 105 (2d Cir.2000). The cost and damages provisions thus provide a potent deterrent against anyone who would file a possibly frivolous petition. *In re John Richards Homes Bldg. Co. L.L.C.*, 439 F.3d 248 (6th Cir. 2006) (affirming award of $4,100,000 in compensatory damages and $2,000,000 in punitive damages). But if a petition is not dismissed, the debtor has no right to relief under these provisions. The creditors are exercising a right given to them by Congress.

It follows that two parties cannot—by contract—agree to delegate to an arbitrator the power to decide whether either can file a bankruptcy petition, voluntary or involuntary. Although an arbitrator's powers are vast under the FAA and the New York Convention, they do have limits. "[T]he Arbitration Act's mandate may be overridden by a contrary congressional command." *Shearson/Am. Exp., Inc. v. McMahon*, 482 U.S. 220, 226 (1987); *see also In re Belton v. GE Cap. Retail Bank*, 961 F.3d 612, 615 (2d Cir. 2020), *cert. denied*, 141 S. Ct. 1513 (2021) ("The Arbitration Act requires courts to strictly enforce arbitration agreements. But like any statutory directive, that mandate may be overridden by contrary congressional intent."). The Second Circuit has recently reiterated that congressional intent to override the FAA's mandate to strictly enforce arbitration agreements "may be deduced from 'the statute's text or legislative history, or from an inherent conflict between arbitration and the statute's underlying purposes.'" *In re Belton*, 961 F.3d at 615 (quoting *McMahon*, 482 U.S. at 227). "Disputes that involve both the Bankruptcy Code and the [FAA] often present conflicts of 'near polar extremes: bankruptcy policy exerts an inexorable pull towards centralization while arbitration policy advocates a decentralized approach toward dispute resolution.'" *MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104, 108 (2d Cir. 2006) (quoting *In re U.S. Lines, Inc.*, 197 F.3d at 640). The Second Circuit has

stated that "[t]he Arbitration Act as interpreted by the Supreme Court dictates that an arbitration clause should be enforced 'unless [doing so] would seriously jeopardize the objectives of the Code.'" *In re U.S. Lines, Inc.*, 197 F.3d at 640 (quoting *Hays & Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 885 F.2d 1149, 1161 (3d Cir. 1989)). It follows that when enforcement of an arbitration clause would seriously jeopardize the objectives of the Code an arbitration clause should not be enforced. "In order to determine whether enforcement of an arbitration agreement would present an inherent conflict with the Bankruptcy Code, we must engage in a

> particularized inquiry into the nature of the claim and the facts of the specific bankruptcy. The objectives of the Bankruptcy Code relevant to this inquiry include the goal of centralized resolution of purely bankruptcy issues, the need to protect creditors and reorganizing debtors from piecemeal litigation, and the undisputed power of a bankruptcy court to enforce its own orders."

In re Anderson, 884 F.3d at 389 (quoting *MBNA Am. Bank, N.A.*, 436 F.3d at 108 (citation and internal quotation marks omitted)). "If a severe conflict is found, then the court can properly conclude that, with respect to the particular Code provision involved, Congress intended to override the [FAA's] general policy favoring the enforcement of arbitration agreements." *MBNA Am. Bank, N.A.*, 436 F.3d at 108; *see also In re Project Restore*, 2022 WL 6233552, at *4 (holding that arbitration clause is overridden when Congress intended the FAA to yield to a contrary congressional command, "which may be deduced from (i) the text of the statute, (ii) the statute's legislative history, or (iii) an inherent conflict between arbitration and the statute's underlying purposes"); *In re Patriot Solar Grp., LLC*, 569 B.R. 451 (Bankr. W.D. Mich. 2017) (denying motion for relief from the automatic stay so that a contractual counterparty could pursue arbitral proceeding against debtor pursuant to arbitration provision in the parties' contract).

Courts have considered the preemptive force of Section 303 of the Bankruptcy Code in two related contexts. Neither is controlling but both are instructive. In *Project Restore*, the

question was whether an agreement that the parties arbitrate a dispute as a prerequisite to an involuntary petition could thwart the rights of a creditor to file a petition under Section 303. *In re Project Restore*, 2022 WL 6233552, at *1–2. The petitioning creditor had signed an arbitration agreement that any dispute it had with the debtor would be resolved through arbitration. *Id*. The debtor argued that the involuntary petition should be dismissed because, in determining whether to allow an order for relief, the court would have to decide arbitrable issues. *Id.* at *1. As the court characterized it, the case involved the question whether the creditors' rights to file a bankruptcy petition trumped its obligation under the arbitration agreement, as made enforceable by the FAA, to present the dispute in the first instance to the arbitral tribunal. *Id.* at *4–5. The court held that there was "an inherent conflict between the underlying purposes of the Bankruptcy Code and arbitration, at least to the extent that arbitration would preclude a creditor's right to pursue an involuntary bankruptcy." *Id.* at *4. Thus, in the court's view, the issues presented by the petition were ones given exclusively to the bankruptcy courts by the Bankruptcy Code and over which the arbitrator had no authority. *Id.* at *5. The court highlighted first that bankruptcy courts had "exclusive jurisdiction over bankruptcy cases," second that "the bankruptcy court [was] the sole court with which a petition, whether voluntary or involuntary, [could] be filed to commence a bankruptcy proceeding" and "[a] bankruptcy case could not be commenced by filing a petition for bankruptcy with an arbitrator," and third that only the bankruptcy court and not the arbitrator could determine whether the petition satisfied the requirements of Section 303 and enter an order for relief. *Id.* at *4–5. The court also noted that under the debtor's approach, "a petitioning creditor with a disputed claim subject to an arbitration clause would have to have an arbitration award in order to qualify as a petitioning creditor, regarding of whether the dispute was bona fide." *Id.* at *5. The court concluded that "a

creditor cannot contract away its right as a petitioner in an involuntary case any more than a debtor can contract away its right to file a voluntary bankruptcy." *Id.* at *6. In sum, that court held that "creditors cannot prospectively delegate rights under the Bankruptcy Code to an arbitrator." *Id*.

The question in *In re Miles* was whether state law tort causes of action for damages predicated upon the filing of an involuntary bankruptcy petition were completely preempted by the Bankruptcy Code and whether a claim for damages arising from the filing of such a petition could be prosecuted other than through Section 303 of the Code. *In re Miles*, 430 F.3d 1083 (9th Cir. 2005). The plaintiffs in that case were relatives of the debtors who alleged that several involuntary bankruptcy petitions filed by the creditors-defendants, which were subsequently dismissed, gave rise to causes of action under the state law torts of negligence, defamation, false light, abuse of process, intentional and negligent infliction of emotional distress, and negligent misrepresentation. *Id.* at 1086. The creditors-defendants removed the case which had been filed in state court. *Id.* at 1087. The Bankruptcy Appellate Panel of the Ninth Circuit held that the case was properly removed on grounds that the causes of action asserted by the plaintiffs were completely preempted by the Bankruptcy Code, and that the plaintiffs' claims were without merit because they did not satisfy Section 303. *Id.* at 1087. The Ninth Circuit affirmed. As relevant here, the Ninth Circuit held that "Congress intended 11 U.S.C. § 303(i) to provide the exclusive basis for awarding damages predicated upon the filing of an involuntary bankruptcy petition," *id.* at 1089, and that "[p]ermitting state courts to decide whether the filing of an involuntary bankruptcy petition was appropriate would subvert the exclusive jurisdiction of the federal courts and undermine uniformity in bankruptcy law," *id.* at 1090. The court reasoned that "Congress created involuntary bankruptcy proceedings to enable creditors who are unable to extract

preferences or unequal transfers from distressed debtors to achieve equitable treatment." *Id.*; *see also In re Miles*, 294 B.R. at 760. The court also noted that Section 303(i)'s remedial scheme was "comprehensive" and "addresse[d] the full range of remedies, from costs and attorneys' fees for dismissed involuntary petitions to compensatory and punitive damages for involuntary petitions filed in bad faith," and that Congress's authorization of certain sanctions for petitions filed in bad faith "suggest[ed] that Congress rejected other penalties." *In re Miles*, 430 F.3d at 1090. The court further noted that the Constitution itself recognized the importance of uniformity in the administration of the bankruptcy laws, providing that Congress had the power "to establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." *Id.* (quoting U.S. Const. Art. I, § 8, cl. 4). The court held, based on "[t]he 'highly complex' nature of the Bankruptcy Code and 'the unique, historical, and even constitutional need for uniformity in the administration of bankruptcy laws,'" that Section 303(i) provides the exclusive cause of action for damages predicated upon the filing of an involuntary bankruptcy petition and that state courts had no power to grant such relief. *Id.* at 1090–91 (quoting *MSR Expl., Ltd. v. Meridian Oil, Inc.*, 74 F.3d 910, 914–15 (9th Cir. 1996) (internal citations omitted)). "Allowing state court remedies for wrongful filings may well interfere with the filings of involuntary bankruptcy petitions by creditors and with other necessary actions that they, and others, must or might take within the confines of the bankruptcy process." *Id.* at 1090. The court concluded: "Permitting state courts to decide whether the filing of an involuntary bankruptcy petition was appropriate would subvert the exclusive jurisdiction of the federal courts and undermine uniformity in bankruptcy law by allowing state courts to create their own standards as to when a creditor may properly file an involuntary petition." *Id.*

Outside the arbitration context, the Second Circuit itself has limited the circumstances under which a court may issue an anti-litigation injunction barring bankruptcy filings as part of their broad equitable powers, cautioning that such power is "to be exercised cautiously." *Byers*, 609 F.3d at 91. In *Byers*, it approved such an injunction in the case of a Securities and Exchange Commission ("SEC") receivership only after concluding that the receivership would "accomplish[d] what a bankruptcy would."[31] *Id.* at 92. And, in *Royal Business Funds*, the Second Circuit affirmed an anti-suit injunction where the debtor was subject to a federal receivership (with the Small Business Administration ("SBA") serving as receiver pursuant to federal statute) to which it had consented and which had the authority to address the claims by all of the debtor's creditors. 724 F.2d at 16. No rights of creditors were impaired. In that instance, "[t]he bankruptcy petition, which was filed by the debtor rather than by third-party creditors, [would] disrupt the receiver's attempts to improve the company's fortunes." *Id.* The court concluded that "no public or private interest [wa]s served by allowing [the company] to repudiate the arrangements it made with the SBA." *Id.*

In re Miles, *Project Restore*, *Byers*, and *Royal Business Funds* strongly suggest that Eletson and Levona could not have—by private agreement to resolve disputes through arbitration—contracted away the rights of Levona, or an affiliate of Levona, to file an

[31] "A primary purpose of appointing a receiver is to conserve the existing estate." *Esbitt v. Dutch-Am. Mercantile Corp.*, 335 F.2d 141, 143 (2d Cir.1964). "Although neither the Securities Act of 1933 nor the Securities Exchange Act of 1934 explicitly vests district courts with the power to appoint trustees or receivers, courts have consistently held that such power exists where necessary to prevent the dissipation of a defendant's assets pending further action by the court." *S.E.C. v. Am. Bd. of Trade, Inc.*, 830 F.2d 431, 436 (2d Cir. 1987), *cert. denied sub nom.*, 485 U.S. 938 (1988) (internal citation omitted). The Second Circuit has held that, where the SEC has alleged violations of the Securities Exchange Act, "the appointment of a trustee to help preserve the status quo while the various transactions were unraveled was necessary to obtain an accurate picture of what transpired." *Sec. & Exch. Comm'n v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1105 (2d Cir.1972), *abrogated on other grounds by Liu v. S.E.C.*, 140 S. Ct. 1936 (2020).

involuntary bankruptcy petition, and that the arbitral panel lacked the authority to enjoin Pach Shemen from filing such a petition. A "severe conflict" would be presented by any such provision. If, as the court held in *Project Restore*, a "petitioning creditor cannot contract away its right as a petitioner in an involuntary case" and cannot be forced to get an arbitrator's approval before filing an involuntary petition because "creditors cannot prospectively delegate rights under the Bankruptcy Code to an arbitrator," 2022 WL 6233552, at *16, it follows that an arbitrator in a case where the petitioning creditor has not contracted away its rights to file an involuntary petition cannot arrogate to himself the power to determine whether an involuntary petition may be filed or not. The assumption of such a power by the arbitrator would undermine a core proceeding committed to the exclusive jurisdiction of the bankruptcy court. And if, as the Ninth Circuit held in *Miles*, the exercise of jurisdiction by a state court to impose financial sanctions upon petitioning creditors based on "their own standards as to when a creditor may properly file an involuntary petition" would first, subvert the exclusive jurisdiction of the federal courts to determine whether a petition was properly filed or not, second, defeat the federal policy that "the potential costs of filing an involuntary bankruptcy petition should not be governed by state law," *In re Miles*, 430 F.3d at 1090, and third, undermine the uniformity of the Bankruptcy Code, so too here the exercise of jurisdiction by an arbitrator to determine *ex ante* whether a bankruptcy petition may be filed, and then to impose *ex post* financial sanctions when he has determined that the petition should not have been filed, would also conflict with the Bankruptcy Code, federal policy, and the uniformity intended to be achieved by the Constitution. In short, as the court stated in *Miles*, if Eletson felt aggrieved by the filing of the involuntary petition, it had "a comprehensive scheme of remedies available in the federal courts." *Id.* It had no right under the arbitration agreement and under the law to obtain relief from the arbitral tribunal.

The arrogation by the arbitrator of the power to determine whether a party could join in an involuntary petition clearly conflicts with the Code and its underlying purposes. Section 303 contains a carefully designed and balanced structure for the filing of an involuntary petition based on the number, type, and aggregate nominal significance of creditors joining in the petition. If there are fewer than twelve holders of claims that are not contingent as to liability or the subject of a bona fide dispute as to liability or amount (excluding certain specified insiders), an involuntary petition can be filed by a single holder of at least $18,600 (originally "$10,000," adjusted effective April 1, 2022) of such claims. 11 U.S.C. § 303. If there are twelve or more such holders (excluding certain specified insiders), the petition must be filed by three or more of such entities. *Id.* The Code does so in order to permit creditors, as a class, to preserve their interests from the debtor's dissipation of its assets and to ensure that they have a forum in which the interests of all of the creditors are protected, while at the same time protecting against the risk of a premature or vexatious filing that would injure both the debtor and its creditors. The arbitrator's exercise of authority, if recognized by this Court, would disrupt that balance and undermine the purposes of Section 303. If accepted, a canny debtor—intent on defeating an involuntary petition—could undermine the rights of all of the creditors by agreeing with some of them that they would not under any circumstances join in an involuntary petition without first going through the arbitral hoop. A potential involuntary creditor, in those circumstances, might find no one who could join the petition—not because there were no qualified creditors and not because the debtor was not in distress, but because the other creditors had years earlier signed an arbitration agreement. In a world where arbitration agreements are prolific, it is not difficult to imagine a circumstance in which a putative debtor could virtually immunize itself from the risk of any involuntary bankruptcy by the mere expedient of signing arbitration agreements with all

or almost all of its creditors. Indeed, on Eletson's theory, an arbitrator presumably could even prevent a creditor—in either a voluntary or involuntary proceeding—from filing a notice of claim in a bankruptcy proceeding until the arbitration was concluded. If the filing was part of an "overall strategy . . . intended to disrupt the status quo and find another path to obtain the 'assets of [the Company] . . . or assets in dispute in th[e] arbitration,'" Dkt. No. 67-58 at 61, such an injunction would be within the arbitrator's prerogative. Such an order might provide an immediate benefit to a party in the arbitration. However, it would forestall the bankruptcy, delay the debtor's liquidation or emergence from bankruptcy, and thereby would undermine the rights of all of the other creditors, undercut the functioning of the Bankruptcy Code, and intrude on the exclusive jurisdiction of the bankruptcy courts.

The risk is not merely hypothetical. In this case, Pach Shemen joined a petition filed by just two of Holdings' creditors who sought the assistance of the bankruptcy court in order to protect against the risk of Holdings' dissipation of assets. As it turns out, their petition was well-founded. The involuntary bankruptcy was not dismissed. Holdings ultimately agreed to file a motion converting the bankruptcy proceeding to a voluntary case under Chapter 11 and the interests of the creditors are being protected. Dkt. No. 65 ¶ 134; Dkt. No. 66 ¶ 134. In the bankruptcy, Holdings agreed to pay the fees of the involuntary creditors. There was no finding, nor apparently could there have been one, by the bankruptcy court that the involuntary petitions did not qualify or that the petition was filed in bad faith. Had Pach Shemen not joined in the relief requested by the other creditors, the bankruptcy court might never have been in the position to accord such relief. The congressional purpose underlying Section 303 would have been thwarted. It thus cannot be that the arbitrator had the power to prevent Pach Shemen from

joining the petition or, once Pach Shemen had joined the petition, to impose on it damages not authorized by Section 303 for having done so.

Of course, here, the Court need not go so far as to hold that two parties could never agree to delegate to an arbitrator the power to determine whether either could file an involuntary bankruptcy petition. It is clear from the arbitration provision here that the parties did not agree to give that power to this arbitrator, and thus that the arbitrator exceeded his powers either by issuing the injunction he did as applied to the filing of the bankruptcy petition or by ordering damages for the violation of the injunction. The arbitrator had the power to protect the property and disposable goods that were the subject of the arbitration and to preserve the integrity of the proceedings before him. Instead, the Status Quo Injunction as interpreted and applied by the arbitrator granted relief of a different nature. The arbitrator interpreted and applied the Status Quo Injunction to prevent an entity that was not before the arbitral tribunal from availing itself of its rights to relief in judicial fora, pursuant to instruments that were not the subject of the arbitration, and pursuant to rights over which the arbitral tribunal had no jurisdiction. And it did so by preventing that third party from seeking the relief available to any person—debtor or creditor—available from the bankruptcy courts pursuant to the Bankruptcy Code. Permitting an arbitrator to enjoin an involuntary bankruptcy petition would fundamentally change the nature of arbitration, effectively forcing into the arbitral tribunal issues that affect the rights of third parties and that are committed by the Bankruptcy Code to the bankruptcy courts. In *Stolt-Nielsen S.A.*, 559 U.S. at 685, the Supreme Court refused to read an arbitration agreement as authorizing class arbitration where the agreement was silent regarding class arbitration. The Court recognized that "parties are 'generally free to structure their arbitration agreements as they see fit,'" *id.* at 683 (quoting *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 57 (1995))), including by

selecting the "rules under which any arbitration will proceed," *id.* Still, the Court refused to infer from silence agreement to a procedure that would fundamentally change the nature of arbitration. *Id.* Here too, the LLCA's silence with respect to anti-bankruptcy cannot be read as a conferral of such authority of a fundamentally different nature.

The same conclusion follows with respect to the Bondholder Litigation. Although the arbitrator stated that the proceedings were launched to "find another path to obtain the 'assets of [the Company] . . . or assets in dispute in this arbitration,'" Dkt. No. 67-58 at 61, the matters to be addressed in the arbitration proceeding and in the Bondholder Litigation just like those in the bankruptcy proceeding, respectively, were entirely different. The former went to Eletson's rights under the LLCA and whether the Company or the Nominees were entitled to the Preferred Interests; the latter went to the rights of Pach Shemen under the bond indenture to the payment of interest and the repayment of principal for loans that had been extended to Holdings. The arbitrator did not find that the Bondholder Litigation or the bankruptcy proceedings would resolve any of the legal or factual issues in the arbitration. Because both sets of proceedings involved different issues, they could not have done so. He also did not base his finding of a violation on any notion that the Bondholder Litigation interfered with or undermined the integrity of the arbitration. Before it was stayed on March 8, 2023 following the filing of the bankruptcy petition, the only activity on the docket consisted of Holdings' agreement with the Trustee that Holdings would have additional time to respond to the complaint. *Wilmington Sav. Fund Soc'y, FSB*, CM-ECF No. 23-cv-261, Dkt Nos. 17, 22.

As Respondent notes, an arbitration award is divisible for purposes of confirmation. *See D.H. Blair & Co.*, 462 F.3d at 104 (holding that a court "can confirm . . . the award either in whole or in part" in FAA case); *Orion Shipping & Trading Co.*, 312 F.2d 299 (affirming district

court's partial confirmation in FAA case). The Court chooses to do so here in light of the "strong federal policy favoring arbitration, the enforcement of arbitration agreements and the confirmation of arbitration awards." *Pike*, 266 F.3d at 89; *cf. Smarter Tools Inc.*, 57 F.4th at 383 ("An award should be enforced, 'despite a court's disagreement with it on the merits, if there is a barely colorable justification for the outcome reached.'" (quoting *T.Co Metals, LLC v. Dempsey Pipe & Supply, Inc.*, 592 F.3d 329, 339 (2d Cir. 2010))). The portions of the award that found Levona, Pach Shemen, and Murchinson liable for violating the Status Quo Injunction and the damages ordered for those violations thus cannot stand.[32]

E. Fee Award to Corp and Holdings

Finally, Respondent argues that the arbitrator exceeded his authority in awarding fees and costs to Holdings and Corp. Dkt. No. 50 at 31. The arbitrator awarded Petitioners $9,590,222 in attorneys' fees, expenses, and costs for the arbitration, including a success fee in the amount of $1,794,950.70. Dkt. No. 67-58 at 86–87. Respondent argues that the award of attorneys' fees and costs to Petitioners exceeded the arbitrator's authority because the LLCA empowers the arbitrator to "award reasonable attorneys' fees and reasonable travel expenses (excluding meals) to the prevailing party," Dkt. No. 67-2 § 12.14(d), and because Delaware law states that "'the defendant is the prevailing party' if a plaintiff receives 'zero dollars in damages,'" Dkt. No. 50 at 31 (quoting *Cooke v. Murphy*, 99 A.3d 226 (Del. 2014)). As Holdings and Corp were not awarded damages by the arbitrator, Respondent argues that the arbitrator could not permissibly

[32] The Court therefore need not consider Respondent's argument that this portion of the Award should be vacated on the theory that the arbitrator was without power to award fees and costs incurred in the bankruptcy case to parties other than the bankrupt debtor—Holdings, Dkt. No. 50 at 28, except to note that the arbitrator did not award fees and costs to third parties but rather to Eletson "*to be paid to the entity or individuals who paid those costs and fees*." Dkt. No. 67-58 at 67 (emphasis added). Whether Eletson would have had the power to further distribute the compensation to other parties is not before the Court.

interpret the LLCA in a manner that would deem Holdings and Corp prevailing parties eligible for fees. *Id.*

Petitioners respond that the arbitrator had the authority to determine that Holdings and Corp were prevailing parties and that he therefore also had the authority under the LLCA to award them attorneys' fees and costs. Dkt. No. 54 at 27–28. Petitioners dispute Respondents' assertion that Delaware law requires a party to be awarded nonzero dollar damages to be considered the prevailing party, and argue instead that "a prevailing party is one who 'predominated in the litigation.'" *Id.* at 28 (quoting *Bako Pathology LP v. Bakotic*, 288 A.3d 252, 281 (Del. 2022)). Petitioners point to a case under Delaware law in which a court granted a party prevailing status and awarded it attorneys' fees and expenses even though its only relief in the underlying action was inspection of certain books and records. *Id.* (citing *Aloha Power Co., LLC v. Regenesis Power, LLC*, 2017 WL 6550429, at *5 (Del. Ch. Ct. Dec. 22, 2017)).

The arbitrator rejected Respondent's argument as "completely without merit." Dkt. No. 67-58 at 87. The arbitrator reasoned that, throughout the arbitration, it had been "clear that, in the event the option was exercised, the preferred interests would transfer to [the Company] or its nominee," *id.* at 88, and that "Eletson would turn over any damages" to the non-party Company, *id*. He thus ruled "it is Eletson that substantially prevailed on its claims in this arbitration." *Id.* at 88.

The fee award was well within the scope of the arbitrator's "contractually delegated authority." *Jock*, 942 F.3d at 622 (quoting *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569 (2013)). An arbitrator may award attorneys' fees and/or arbitration costs, to the extent they are permitted in the relevant arbitration provision or agreement. *See, e.g.*, *PaineWebber Inc. v. Bybyk,* 81 F.3d 1193, 1199 (2d Cir. 1996); *LiveWire Ergogenics*, 645 F. Supp. 3d at 299. The

LLCA delegated to the arbitrator the authority to interpret its terms and to determine any dispute, claim or controversy arising out of it. Dkt. No. 67-2 § 12.14(a). One of those terms is Section 12.14(d) which provides in pertinent part that "the arbitrator shall have discretion to award reasonable attorneys' fees and reasonable travel expenses (excluding meals) to the prevailing party, which fees may be set by the arbitrator of such action . . . and which fees shall be in addition to any other relief that may be awarded." *Id.* § 12.14(d). Thus, the arbitrator did not exceed his authority when he addressed the question of the prevailing party in the arbitration and determined that Petitioners were the prevailing party. *See, e.g.*, *DiRussa v. Dean Witter Reynolds Inc.*, 121 F.3d 818, 824 (2d Cir.1997), *cert. denied*, 522 U.S. 1049 (1998); *MasTec N. Am., Inc. v. MSE Power Sys., Inc.*, 581 F. Supp. 2d 321, 330–31 (N.D.N.Y 2008); *Ferrand v. Mystique Brands LLC*, 2021 WL 119572, at *8 (S.D.N.Y. Jan. 13, 2021); *Ludgate Ins. Co., Ltd. v. Banco De Seguros Del Estado*, 2003 WL 443584, at *6–7 (S.D.N.Y. Jan. 6, 2003).

Respondent's argument is more properly understood as a challenge to the substance of the arbitrator's decision and whether he acted in manifest disregard of the law in determining that Petitioners were the prevailing party. So framed, however, the claim is no more successful. Respondent relies upon the Delaware Supreme Court's decision in *Cooke v. Murphy*, 99 A.3d 226, a motor vehicle accident case in which the court held that a plaintiff who proved the defendant's liability but failed to prove damages was not the prevailing party and was not entitled to an award of costs under Delaware Superior Court Civil Rule 54(d).[33] Following an earlier decision by a lower court, the Delaware Supreme Court reasoned "that where the

[33] Delaware Superior Court Civil Rule 54(d) states: "Except when express provision therefor is made either in a statute or in these Rules or in the Rules of the Supreme Court, costs shall be allowed as of course to the prevailing party upon application to the Court within ten (10) days of the entry of final judgment unless the Court directs otherwise." Del. Super. Ct. Civ. R. 54(d).

judgment reflects an award of zero dollars, 'it necessarily follows that Plaintiff has obtained no judgment from Defendant and Defendant is indeed the prevailing party for purposes of Rule 54(d).'" *Id.* at *3 (quoting *Streetie v. Progressive Classic Ins. Co.*, 2011 WL 1259809, at *15 (Del. Super. Ct.) *aff'd*, 35 A.3d 419 (Del. 2011)).

The arbitrator did not manifestly disregard any law in determining that Petitioners were the prevailing parties under the LLCA and entitled to an award of fees. *Cooke* neither addressed the question whether a party to a contract who succeeds in enforcing a provision specifically benefitting third parties is a prevailing party, nor did it involve a contractual fee-shifting provision. Here, where there was a contractual fee-shifting provision, the question whether Petitioners were prevailing parties here is purely one of contractual interpretation. *See Bako Pathology LP*, 288 A.3d at 280–81. The term "prevailing party" is a legal "term of art that the parties bargained for in the contract[]." *Id.* at 281. It refers to the party which has "predominated in the litigation" and "who has prevailed on most of [the] claims." *Id.* (internal citations omitted). The prevailing party need not have personally received an award of money damages. *See, e.g.*, *Aloha Power Co.*, 2017 WL 6550429, at *5 (concluding that party who succeeded in books-and-records dispute was the prevailing party); *Mastrio v. Sebelius*, 768 F.3d 116, 120 (2d Cir. 2014) ("A plaintiff receiving . . . injunctive relief may be a prevailing party where she prevailed on the merits." (internal quotation marks omitted)); *Tex. State Tchrs. Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782 (1989) ("Plaintiffs may be considered 'prevailing parties' for attorneys' fee purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit.'"); *cf. Farrar v. Hobby*, 506 U.S. 103, 113 (1992) ("[T]he *degree* of the plaintiff's success does not affect eligibility for a fee award." (alteration in original)).

The arbitrator acted within his discretion in determining that Petitioners were the prevailing parties and in awarding them fees. In its Third Amended Statement of Claims and Response to Counterclaims, Eletson sought a determination that Levona *never* had any lawful interests in the Company, that the assignment of the two entities owning Company vessels to Levona was procured by coercion, fraud, illegal, and other wrongdoing and is null and void, that Levona not be considered an interest holder of the Company, or, in the alternative, specific performance of the buy-out of Levona's preferred stock, and compensatory and punitive damages and attorneys' fees. Dkt. No. 31-35. In its Counterclaims, Levona sought an order requiring any agent of Eletson to vacate the two Company vessels, declaratory judgment that the loan was not repaid and the Purchase Option was not executed, a declaration that Levona remains in control of the preferred shares, a declaration that Levona is authorized to execute a deal with Unigas, and compensatory and punitive damages and attorneys' fees. Dkt. No. 31-11.

The arbitrator ruled for Petitioners. He concluded: "Claimants have proven breaches of the LLCA and the covenant of good faith and fair dealing and established that Eletson exercised the purchase option pursuant to the BOL, and are therefore entitled to the declaratory relief, compensatory damages, punitive damages, prejudgment interest, and attorney's fees," and that "Respondent has not proven any of its counterclaims and they are dismissed. Respondent is entitled to recover nothing from the Claimants." Dkt. No. 67-58 at 95. The arbitrator issued declaratory relief finding that Eletson exercised the buyout option in the BOL; that as of March 11, 2022, Levona had no membership interest in the Company; that the Preferred Interests were transferred to the Nominees; that Levona had breached the LLCA and violated the Status Quo Injunction; and that Levona, Murchinson, and Pach Shemen were obligated to pay damages to the Company and to the Nominees. *Id.* at 95–100. As a result of the Award, Eletson and the

Nominees will be the sole owners of the Company. It is irrelevant that the Preferred Interests will be transferred to the Nominees and not to Eletson itself. Under the BOL, the Preferred Interests would never have been transferred to Eletson—Eletson contracted for a buyout option for the Company or the Nominees to receive the Preferred Interests. But the fact that, as a result of Eletson prevailing on its contract claim, the Company or the Nominees will receive the direct monetary benefit does not make Eletson any less the prevailing party than it would any other contract party who succeeds in enforcing a contract provision that inures to the benefit of a third-party beneficiary. It does not prevent Eletson from being a prevailing party. *See, e.g.*, *Dattner v. Conagra Foods, Inc.*, 458 F.3d 98 (2d Cir. 2006); *Christopher P. by Norma P. v. Marcus*, 915 F.2d 794, 804–05 (2d Cir. 1990), *cert. denied*, 498 U.S. 1123 (1991). *Ferrand*, 2021 WL 119572, at *10 ("Even assuming *arguendo* that Ferrand's application here of the contractual term 'prevailing party' were the more persuasive, this case falls far short of being one of 'those exceedingly rare instances where some egregious impropriety on the part of the arbitrators is apparent but where none of the provisions of the FAA apply.'" (quoting *Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 389 (2d Cir. 2003))).

III. Whether the Arbitrator Manifestly Disregarded the Law

Lastly, Respondent argues that the arbitrator grossly misinterpreted the BOL and manifestly disregarded the law. Dkt. No. 50 at 32. Specifically, Respondent contends that the arbitrator acted in manifest disregard of the law by relieving Eletson of the obligation under the BOL to have provided formal written notice of its intention to exercise the Purchase Option, *id.* at 33–34, and by failing to make any effort to interpret the BOL under English law, *id.* at 34–35. According to Respondent, these "deviation[s] from the plain contractual language and fundamental canons of contract interpretation [were] so far outside the range of permissible decisions as to warrant vacatur." *Id.* at 35.

Review of an arbitration award for manifest disregard of law is "severely limited." *Westerbeke Corp. v. Daihatsu Motor Co., Ltd.*, 304 F.3d 200, 208 (2d Cir. 2002) (Sotomayor, J.) (quoting *Gov't of India v. Cargill Inc.*, 867 F.2d 130, 133 (2d Cir. 1989)). To vacate an arbitral award on grounds of manifest disregard, the court "must find 'something beyond and different from a mere error in the law or failure on the part of the arbitrators to understand or apply the law.'" *Id.* (quoting *Saxis S.S. Co. v. Multifacs Int'l Traders, Inc.*, 375 F.2d 577, 582 (2d Cir. 1967)). Vacatur under the manifest disregard standard is limited to "those exceedingly rare instances where some egregious impropriety on the part of the arbitrator is apparent." *Weiss v. Sallie Mae, Inc.*, 939 F.3d 105, 109 (2d Cir. 2019) (quoting *T.Co Metals, LLC*, 592 F.3d at 339). "A court may vacate an arbitral award based on manifest disregard only upon a finding that '(1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrators was well defined, explicit, and clearly applicable to the case.'" *Precision Castparts Corp. v. Schultz Holding GmbH & Co. KG*, 2020 WL 4003578, at *2 (S.D.N.Y. July 15, 2020) (quoting *Zurich Am. Ins. Co.*, 811 F.3d at 589). "The test has sometimes been described in three parts, as requiring a demonstration that (1) 'the law that was allegedly ignored was clear, and in fact explicitly applicable to the matter before the arbitrators'; (2) 'the law was in fact improperly applied, leading to an erroneous outcome;' and (3) 'the arbitrator must have known of [the law's] existence, and its applicability to the problem before him.'" *Id.* (quoting *T.Co Metals*, 592 F.3d at 339); *see also LiveWire Ergogenics*, 645 F. Supp. 3d at 296. "A federal court cannot vacate an arbitral award merely because it is convinced that the arbitration panel made the wrong call on the law." *Wallace*, 378 F.3d at 190. Indeed, "[o]nly a barely colorable justification for the outcome reached by the arbitrators is necessary to confirm the award," *D.H. Blair & Co.*, 462 F.3d at 110, even if the "court[] disagree[s] with [the

arbitrator] on the merits," *Wallace*, 378 F.3d at 190. "A 'barely colorable justification' exists so long as the arbitrators had reasoning on which they 'could have justifiably rested their decision.'" *Smarter Tools*, 57 F.4th at 383 (quoting *Willemijn Houstermaatschappij, BV v. Standard Microsystems Corp.*, 103 F.3d 9, 13–14 (2d Cir. 1997).

A. The Notice Requirement

Levona first contends that the arbitrator manifestly disregarded the law by holding that Petitioners had satisfied the notice requirement of the BOL. Dkt. No. 50 at 34. The BOL provides that the Purchase Option is "exercisable by written notice to Levona" by the Company "for either [the Company] or its nominee to purchase all of the membership interests held by Levona in [the Company]." Dkt. No. 67-10 § 2.3. It further provides that if an Option Notice is not "validly served by the expiry of the Purchase Option Period," the Purchase Option will lapse. *Id*. § 2.5. The arbitrator found that "there does not seem to be a separate formal written notice provided to Levona by Eletson exercising the option," but concluded that Levona received actual notice and that the evidence established that "the parties acknowledged that Eletson was exercising the option." Dkt. No. 67-58 at 42. The arbitrator supported that conclusion by the content of the agenda for the March 10, 2022 Company Board of Directors meeting which contained the language "[u]pdate on Eletson's intention to exercise the purchase option." *Id.* As "additional support," he looked to the Unanimous Written Consent which was signed by all directors including Levona directors, but gave only the Eletson directors authority to sign or deliver on behalf of the company notices in connection with the BOL. *Id.* at 43–44. Finally, the arbitrator concluded that "both parties acted in a manner consistent with the fact that Levona had been bought out of the Company." *Id.* at 44. Thus, the arbitrator concluded "[a]t best, the absence of a written notice and payment of $1 dollar are formalities that the parties failed to

observe." *Id.* The arbitrator did not cite English law or Delaware law in those portions of his findings.[34]

Respondent supports its argument that the arbitrator's conclusion on notice satisfied the first two prongs of the manifest disregard test—that the law allegedly ignored was clear and explicitly applicable to the matter before the arbitrator, and that the arbitrator misapplied the law—by citing the general axiom that a contract is to be interpreted to give meaning to its every word, and the Delaware Supreme Court's 1986 decision in *Stoppi v. Wilmington Tr. Co.*, 518 A.2d 82, 86 (Del. 1986), regarding the notice required to be given by a secured party to a debtor prior to the sale or disposition of collateral under the Uniform Commercial Code. Dkt. No. 50 at 34; *see also* Dkt. No. 59 at 13.[35] Respondent argues that the third prong of the test was satisfied—that the arbitrator knew of the law's existence and its applicability to the problem before him—because they directed the arbitrator's attention to the proposition that "a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms." Dkt. No. 55-4 at 9 (quoting *Motors Liquidation Co. DIP Lenders Tr. v. Allianz Ins. Co.*, 2017 Del. Super. LEXIS 279, at *16 (Del. Super. Ct. June 8, 2017)). The argument that the arbitrator manifestly disregarded the law in excusing Petitioners from the requirement of providing written notice is without merit. First, the general proposition of

[34] "[I]t is axiomatic that arbitrators need not disclose the rationale for their award." *Fahnestock & Co., Inc. v. Waltman*, 935 F.2d 512, 516 (2d Cir. 1991). So long as the Court can infer a ground for the arbitrator's decision from the facts of the case, the Court must confirm the award. *Standard Microsystems Corp.*, 103 F.3d at 9.

[35] *Stoppi* interpreted the former Section 9-504(3) of the U.C.C. *Stoppi*, 518 A.2d at 84–86. Article 9 of the U.C.C. was recodified in 2001 and the former Section 9-504(3) is now Section 9-611. It requires a second party that disposes of collateral under Section 9-610 of the U.C.C. to "send" to the debtor and any secondary obligor a "reasonable authenticated notification of disposition." U.C.C. §§ 9-611(b), (c). The *Stoppi* court relied upon a definition of "send" to mean deposition in the mail or delivery for transmission to mean that the notification must be in writing.

contract law that a contract is interpreted according to its plain meaning and so as to give every word meaning provides only limited support to Levona, in the face of the other general proposition that, at least in some circumstances and in some states including Delaware, whether viewed as a covenant or a condition precedent, "[n]otice provisions have generally been interpreted to require substantial compliance," not literal compliance. Richard A. Lord, 6 Williston on Contracts § 49:88 (4th ed. 2003); *Gower v. Trux, Inc.*, 2022 WL 534204, at *11 (Del. Ch. Ct. Feb. 23, 2022) ("When confronted with less than literal compliance with a notice provision, courts have required that a party substantially comply with the notice provision." (quoting *Gildor v. Optical Sols., Inc.*, 2006 WL 4782348, at *7 (Del. Ch. Ct. June 5, 2006))); *Kelly v. Blum*, 2010 WL 629850, at *8 n.52 (Del. Ch. Ct. Feb. 24, 2010) (same); *cf. James Constr. Grp., LLC v. Westlake Chem. Corp*., 650 S.W.3d 392, 405 (Tex. 2022), *reh'g denied* (Sept. 2, 2022); *Bantz v. Bongard*, 864 P.2d 618, 624 (Idaho 1993) ("This Court has long held that only substantial compliance with a contractual notice provision is required."); *Putney Sch., Inc. v. Schaaf*, 599 A.2d 322, 327 (Vt. 1991) ("The rule in Vermont is that substantial compliance with notice requirements will suffice."). Nor do Respondent's citations to Delaware case law. The Delaware Superior Court's decision in *Motors Liquidation Co.* involved the question whether insurance policies that were the assets of General Motors's predecessor had been validly assigned to its successor trust, and in the quotations cited by Levona, the court relied upon New York law. 2017 Del. Super. LEXIS 279, at *16 n. 61 (citing *Greenfield v. Philles Recs., Inc.*, 780 N.E.2d 166 (N.Y. 2002)). It has no apparent bearing on the notice issues raised here. *Stoppi v. Wilmington Trust Co.*, 518 A.2d at 86, the case Levona cites before this Court, holds that written notification to the debtor prior to any sale or other disposition on collateral is "the better rule" under the U.C.C, but also recognizes that "other jurisdictions have

split on the issue." It does not demonstrate that the law that was allegedly ignored was "clear, and in fact explicitly applicable to the matter before the arbitrators." *Precision Castparts Corp.*, 2020 WL 4003578, at *2.

Generally, Respondent misstates the law when it argues that it is sufficient that the arbitrator "knew the Delaware legal principles governing contract interpretation" and that those general principles should be interpreted to defeat Eletson's right to exercise the option in the absence of written notice. Dkt. No. 59 at 18. A party who agrees for an arbitrator to determine its disputes does not contract for those disputes to be determined in accordance with law, but only not in manifest disregard of the law. The Second Circuit has stated that "[a] party seeking vacatur bears the burden of proving that the arbitrators were fully aware of the existence of a clearly defined governing legal principle, but refused to apply it, in effect, ignoring it." *Duferco Int'l Steel Trading*, 333 F.3d at 389.[36] Moreover, in the absence of "an error that is so obvious that it would be instantly perceived as such by the average person qualified to serve as an arbitrator," the only duty of the arbitrator is to be aware of the "governing law identified by the parties to the arbitration." *Id.* Thus, the parties must have made the arbitrator aware not only of the law's existence, but also of "its applicability to the problem before him." *Precision Castparts Corp.*, 2020 WL 4003578, at *2 (quoting *T.Co Metals*, 592 F.3d at 339); *Goldman v. Architectural Iron Co.*, 306 F.3d 1214, 1216 (2d Cir. 2002); *Aksman v. Greenwich Quantitative Rsch. LP*, 563 F. Supp. 3d 139, 150 (S.D.N.Y. 2021), *aff'd*, 2023 WL 6799770 (2d Cir. Oct. 16, 2023) (summary order). More specifically, although the Delaware Superior Court in 2018 required literal compliance with a notice provision preventing the release of funds from escrow

[36] The Third Circuit and the Delaware Supreme Court have both adopted this rule verbatim. *See, e.g.*, *Black Box Corp. v. Markham*, 127 F. App'x 22, 24 (3d Cir. 2005); *SPX Corp. v. Garda USA, Inc.*, 94 A.3d 745, 750 (Del. 2014).

where the contract at issue defined what constituted reasonable notice and required the release of funds if such notice was not provided, *see, e.g.*, *PR Acquisitions, LLC v. Midland Funding LLC*, 2018 WL 2041521, at *6–7 (Del. Ch. Ct. Apr. 30, 2018) (granting summary judgment for plaintiff where defendant contracting party "never directly gave notice to [the plaintiff] in any form before the [contractually specified] date," and did not, in course of litigation, offer any "reason other than its own error for its failure to comply with the notice provision it negotiated"), and more recently stated "as a matter of law, where the contract specifies what constitutes notice thereunder and dictates how to communicate that notice, strict compliance with the notice provision is necessary," *Aluminum Source, LLC v. LLFlex, LLC*, 2023 WL 2547996, at *19 (Del. Sup. Ct. Mar. 16, 2023), that rule appears not to be as uniformly applicable or oblivious to context as Levona suggests. Following *PR Acquisitions*, the Delaware Chancery Court has explained that Delaware courts have "at times, accepted substantial compliance with notice provisions in lieu of actual compliance, when the circumstances so justified." *Vintage Rodeo Parent, LLC v. Rent-A-Center, Inc.*, 2019 WL 1223026, at *15 (Del. Ch. Ct. Mar. 14, 2019). As Chancellor Strine explained: "The requirement of substantial compliance is an attempt to avoid 'harsh results . . . where the purpose of these [notice] requirements has been met.' . . . Substantial performance is 'that which, despite deviations from contract requirements, provides the important and essential benefits of the contract.'" *Gildor*, 2006 WL 4782348, at *7 (internal citations omitted).

Critically, Levona did not cite any of these cases or any other cases that could possibly be relied on to support its position to the arbitrator, and thus did not put him on notice of the applicable law. Levona's argument to the arbitrator regarding notice was limited to a single sentence: "[n]o 'written option notice' was given—this is undisputed." Dkt. No. 55-4 at 19. It

cited no law to the effect that the failure to provide written notice would defeat the exercise of the option when both parties actually knew of Eletson's exercise of the option within the Purchase Option Period. It therefore cannot be said that the arbitrator "knew of a governing legal principle yet refused to apply it or ignored it altogether." *DiRussa*, 121 F.3d at 824 (quoting *Folkways*, 989 F.2d at 112). Accordingly, its argument that the arbitrator manifestly disregarded the law in finding that the notice requirement had been satisfied is unavailing.

B. Interpretation Under Delaware Law

Levona's argument that the arbitrator manifestly disregarded the law by looking only to Delaware law and not to English law is no more successful. The BOL has a choice-of-law clause providing that it would be "governed by and construed in accordance with English law." Dkt. No. 67-10 § 10. Levona did not cite to the arbitrator any English law but only to Delaware law and to New York law. Dkt. No. 31-38 at 48–49, 52–55, 66–67. It can hardly complain that the arbitrator manifestly disregarded a body of law to which it did not direct the arbitrator's attention. *See, e.g.*, *Wallace*, 378 F.3d at 195; *Westerbeke*, 304 F.3d at 209; *DiRussa*, 121 F.3d at 823; *see also GMS Grp., LLC v. Benderson*, 326 F.3d 75, 77–78 (2d Cir. 2003); *Halligan v. Pipe Jaffray, Inc.*, 148 F.3d 197, 202 (2d Cir. 1998), *cert. denied*, 526 U.S. 1034 (1999).

CONCLUSION

The application to confirm is GRANTED IN PART and DENIED IN PART and the motion to vacate is GRANTED IN PART and DENIED IN PART.

The Court confirms the Award as stated in Dkt. No. 67-58, beginning on page 95, including the award of compensatory and punitive damages and the grant of attorneys' fees, costs, expenses, and pre-judgment interest, with the following exceptions:

- Paragraphs A.7, A.8, A.10(i), and A.10(iii) are vacated.
- All awards of relief against Murchinson and Pach Shemen are vacated.

- All awards of relief, including compensatory and punitive damages, based upon violations of the Status Quo Injunction are vacated.

- All awards of attorneys' fees, costs, and expenses relating to the involuntary bankruptcy petition and Bondholder Litigation are vacated.

Parties are directed to each submit a proposed judgment in accordance with this Opinion and Order by February 23, 2024. The Clerk of Court is respectfully directed to close Dkt. Nos. 28, 49.

SO ORDERED.

Dated: February 9, 2024
New York, New York

LEWIS J. LIMAN
United States District Judge

EXHIBIT C

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 04/19/2024

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ELETSON HOLDINGS, INC. and ELETSON CORPORATION, Petitioners, -v- LEVONA HOLDINGS LTD., Respondent.	23-cv-7331 (LJL) AMENDED OPINION AND ORDER

LEWIS J. LIMAN, United States District Judge:

Petitioners Eletson Holdings Inc. ("Holdings") and Eletson Corporation ("Corp" and, together with Holdings, "Eletson" or "Petitioners"), apply for an Order confirming a final arbitration award (the "Award") issued by the Honorable Ariel Belen of the Judicial Arbitration and Mediation Services, Inc. ("JAMS") on September 29, 2023. Dkt. No. 62. Respondent and Cross-Petitioner Levona Holdings, Ltd. ("Levona" or "Respondent"), moves: (1) for an Order, pursuant to Federal Rule of Civil Procedure 12(b)(1), dismissing the petition to confirm the Award; (2) for an Order, pursuant to 9 U.S.C. § 10, vacating the corrected interim award dated August 15, 2023 (the "Corrected Interim Award") and the Award; and (3) for an Order, pursuant to 9 U.S.C. § 9, 9 U.S.C. § 207, and/or Article V of the New York Convention, denying the petition to confirm the Award. Dkt. No. 49.

BACKGROUND

The following facts are drawn from the Amended and Supplemental Petition to Recognize and Enforce the Arbitral Award ("Amended Petition"), Dkt. No. 62, the Award, Dkt.

No. 67-58, and the parties' statements of material fact pursuant to Federal Rule of Civil Procedure 56.1, Dkt. Nos. 65, 66. The facts are undisputed except as otherwise stated.

I. The Relevant Parties

This dispute relates to corporate control over non-party Eletson Gas LLC ("Eletson Gas" or the "Company"). Eletson Gas, formed in 2013 under the laws of the Republic of the Marshall Islands, is a limited liability company that specializes in liquified petroleum gas ("LPG") shipping. Dkt. No. 67-58 at 5; Dkt. No. 62 ¶ 2. The present dispute centers on whether Respondent Levona violated its agreements with and obligations to Petitioners Holdings and Corp, a question which turns in part on whether an option to purchase the preferred shares of Eletson Gas was effectively exercised by Holdings.

Eletson—both Petitioners Holdings and Corp—is an international shipping group owned by three principal families: the families of non-parties Laskarina Karastamati, Vassilis Kertsikoff, and Vasilis Hadjieleftheriadis. Dkt. No. 67-58 at 5. Both Holdings, the parent company, as well as its subsidiary, Corp, are corporations formed under the laws of Liberia. Dkt. No. 62 ¶ 2. Holdings owns the common shares of the Company. *Id.* Corp provides management services for vessels owned directly or indirectly by Eletson Gas in exchange for a management fee.

Respondent Levona is a special purpose entity formed under the laws of the British Virgin Islands on October 20, 2021. *Id.* ¶ 3. Levona is a subsidiary of two hedge funds, Nomis Bay and BPY, that have both engaged the same alternative management company Murchinson Ltd. ("Murchinson") to act as their investment sub-advisor. *Id.*; Dkt. No. 50 at 7 n.2.

II. The Joint Venture

As noted, this case arises from a dispute over the ownership of the preferred shares in the Company, and thereby the control over the Company's decision making and assets. The

Company has historically owned a large fleet of medium and long-range product tankers and has been a leader in the transportation of oil products and gas cargoes. Dkt. No. 67-58 at 6. At the time that the events giving rise to this case occurred, the Company owned and operated fourteen LPG vessels, making its fleet the second largest on the market, second only to Unigas, the Company's primary competitor. *Id.*

The Company was formed in 2013 as a joint venture by Holdings and funds managed by Blackstone Tactical Opportunities ("Blackstone"). *Id.* at 5. At the outset of the joint venture, Holdings, which contributed equity interests in five medium-sized LPG vessels to the enterprise,[1] held (and still retains at present) the common stock in the Company, while the Blackstone funds, which contributed capital, held the preferred shares. *Id.*; Dkt. No. 67-50 ¶¶ 91–92. Over the following few years, the Company was plagued by financial problems, defaulting on several loans. Eventually, in November 2021, Blackstone sold its interest in the Company to Levona, making Levona the owner of the preferred shares previously held by Blackstone. Dkt. No. 67-58 at 7.

Several agreements are relevant to this dispute. The first is the Third Amended and Restated LLC Agreement ("LLCA"), which became effective August 16, 2019, and governs the relationship among the holders of membership interests in the Company and contains the arbitration provision that Eletson invoked in the arbitration at issue here. *Id.* at 6. The original parties to the LLCA were the Company, Holdings (the common shareholder of the Company), Corp (the manager of the fleet of the Company's ships), and Blackstone (which held the preferred shares in the Company through a number of different funds it managed, all of which

[1] The vessels were the Anafi, the Nisyros, the Symi II ("Symi"), the Telendos II ("Telendos"), and the Tilos. Dkt. No. 31-1 at 84. Eletson later contributed capital to the venture as well.

were parties to the LLCA). Dkt. No. 67-2 at 1–2. When Blackstone sold its interest in the preferred shares (the "Preferred Interests") to Levona in November 2021, Levona replaced Blackstone as party to the LLCA, and signed a Joinder Agreement to that effect, agreeing to be fully bound by and subject to the provisions of the LLCA. *See* Dkt. No. 67-4.

The LLCA confers on the parties certain rights and obligations. As relevant to this dispute, the LLCA gave the holder of the Preferred Interests the power to designate three of five members of the Company's Board of Directors. Dkt. No. 67-2 § 3.3. Because the Board of Directors had "the sole right to manage and control the business, operations and affairs of the Company and to do any and all acts on behalf of the Company that are necessary, advisable or convenient to the discharge of its duties," *id.* § 3.1, the LLCA affords the holder of the Preferred Interests managerial control over the Company. Even so, ownership of the Preferred Interests did not guarantee total control over the Company; the LLCA requires the approval of four Directors—one more Director than the holder of the Preferred Interests has the power to select—to undertake any "Fundamental Action," including the acquisition or disposition of any vessels or any assets worth more than $1,000,000. *Id.* § 3.2; *id.* Schedule VI. The LLCA also gives the holder of the Preferred Interests the right to the vast majority of the profits of the Company. When Levona purchased the preferred stock from Blackstone in November 2021, it inherited these rights.

The LLCA also contained a mandatory arbitration provision. Section 12.14(a) provides as follows:

> Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof (including the determination of the scope or applicability of this agreement to arbitrate) shall be determined by arbitration in New York County in the State of New York or any other mutually agreeable location, before a single arbitrator. The arbitrator shall be selected by agreement of the parties. If the parties are unable to agree on an

> arbitrator within 15 days after the demand for arbitration is made, JAMS shall designated the arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The Federal Arbitration Act shall govern the interpretation and enforcement of such arbitration proceeding. The arbitrator shall apply the Law of the State of Delaware and the Republic of the Marshall Islands, as the case may be, in accordance with Section 12.13.[2]

Dkt. No. 67-2 § 12.14(a). Arbitration was designated as the "exclusive and binding method" for resolving any such dispute. *Id.* § 12.14(b). But the Company's financial problems continued despite the LLCA and the Company's new management. By early 2022, five of the Company's ships—over a third of its fleet—had been arrested by various creditors for non-payment of the Company's liabilities. Dkt. No. 67-58 at 54. Multiple arrested ships were scheduled to be sold at auction to compensate creditors.

Three days before the auction was set to proceed, however, Holdings, Corp, the Company, and a wholly-owned subsidiary of the Company, entered into the second agreement with Levona that is relevant to this dispute—the Binding Offer Letter ("BOL")—on February 22, 2022, which, through a desperately-needed infusion of cash in the form of a loan from Levona, enabled the Company to avoid losing most of its fleet. Dkt. No. 67-10. Pursuant to the BOL, the Company agreed to transfer two of its ships to Levona, in exchange for Levona lending up to $10,000,000 to the Company, and granting the Company a limited option to buy Levona out of the Preferred Interests, which would have the effect of terminating Levona's ownership and control of the Company. *Id.* Because it has some relevance to the dispute, the Court describes the terms of the BOL in some detail. The BOL sets forth the terms and conditions pursuant to

[2] Section 12.13 provides that "[t]o the fullest extent permitted under the laws of the Republic of the Marshall Islands, [the LLCA] and the rights and obligations of the parties [t]hereunder shall be governed and construed and enforced in accordance with the laws of the state of Delaware for agreements made and to be performed wholly within that jurisdiction." Dkt. No. 67-2 § 12.13. To the extent that the laws of the Marshall Islands did not permit application of Delaware law, Section 12.13 provides that the law of the Marshall Islands governs. *Id.*

which Levona was "willing to (A) buy the shares and/or membership interests of" two of the Company's vessels, the Symi and Telendos, "from [the Company] in consideration of advancing a purchase option to [the Company] and Eletson Holdings . . . ; [and] (B) advance a US$10,000,000 senior loan to [the Company] . . . ." *Id.* With respect to the purchase of the Symi and the Telendos, the BOL states that "Levona shall buy all of the Shares in the Companies held by [the Company] . . . in consideration of the grant to [the Company] and [Corp] of the purchase option set out in Clause 2" of the BOL. *Id.* § 1.1.

The BOL then goes on to provide the terms and conditions of both the loan and the option to purchase the Preferred Interests from Levona (the "Purchase Option"). Clause Four, which addresses the loan and Assignment, provides that "[c]oncurrently with the Transfer [of the Company's interests in the Symi and the Telendos to Levona], Levona shall enter into a loan agreement . . . for the advance of a loan facility to [the Company] of an amount of US$10,000,000" to be "used as mutually agreed upon between Levona and [the Company] for various refinancing and sources and uses." *Id.* § 4.1. This loan, the BOL provided, was senior to all liabilities of the Company "save for such secured debts of [the Company] as Levona may agree in their sole discretion may remain senior to the loan." *Id.* And, concurrent with the transfer of the interests in the vessels and entry into the loan agreement, the parties agreed that Corp and the Company's subsidiary would assign any claims they had against the Company to Levona until the full amount of the loan was paid back. *Id.* §§ 4.3, 4.4. The BOL further states that the loan terms are to also include: (1) a maturity date of two years from the date of the first drawdown; (2) an interest rate of 10% per annum compounded monthly; and (3) priority on any excess cash flow. *Id.* § 4.2.

Clauses Two and Three of the BOL address the Purchase Option and the consideration for the Purchase Option ("Purchase Option Consideration"), respectively. Clause Two outlines the parameters under which the Company could buy out the Preferred Interests. It states that, "[s]ubject to and in consideration of the Transfer [of shares in the Symi and the Telendos] occurring and the conditions set out in Clause 2.2 and 2.3, Levona hereby grants to [the Company] . . . the option, exercisable by written notice to Levona . . . , for either [the Company] or its nominee to purchase all of the membership interests held by Levona in [the Company] . . . for a consideration equal to the Purchase Option Consideration" detailed in Clause Three. *Id.* § 2.1. However, the BOL sets conditions upon how and when this Purchase Option could be exercised. Clause 2.2 states that the Company "shall only be entitled to serve an Option Notice after either: (a) the Loan and any Interest accrued thereon is fully repaid; or (b) adequate security and/or collateral is provided for the Loan (the adequacy of such security being at the sole discretion of Levona)." *Id.* § 2.2. Clause 2.3 limits the amount of time the relevant parties had to exercise the purchase option. "[A]n Option Notice may only be served within 30 days from the date of [the BOL] ('the Purchase Option Period')." *Id.* § 2.3. The Purchase Option Period could be extended, but only if the loan was at least partially repaid. *Id.* §§ 2.4, 2.5. Under Clause 2.3, "[i]f no Option Notice is validly served by the expiry of such Purchase Option Period, . . . the purchase option shall lapse." *Id.* § 2.3.

Clause Three of the BOL sets forth the formula and methodology for calculating the Purchase Option Consideration. The Purchase Option Consideration is stated to be an amount equal to "$1 plus an amount equal to US$23,000,000 less the Net Value," where the "Net Value" is equivalent to the value of the Symi and the Telendos as determined by an independent valuation. *Id.* §§ 3.2, 3.3. In essence, if the value of the two vessels is less than $23,000,000, the

Company—to exercise the option to buy out Levona's Preferred Interests—must true up the difference to Levona so that the total value of consideration paid to Levona (including the value of the vessels) equals $23,000,000. If the "Net Value" exceeds $23,000,000 (*i.e.*, if the value of the vessels is greater than $23,000,000), then the excess benefits the Company and is applied to reduce the amount outstanding on Levona's loan to the Company.

The BOL also conditioned the loan on an agreement from the Company, Corp, and Holdings that from the last date of the period during which the Purchase Option could be exercised, they would cooperate and vote in favor of any Fundamental Action proposed by Levona. *Id.* § 4.2(d).

Importantly, the BOL links the loan and the Purchase Option. The Company could only exercise the Purchase Option if Levona was repaid the loan and interest in full, or if Levona received, in its sole discretion, "adequate security and/or collateral . . . for the Loan." *Id.* § 2.2(b). If the Company repaid the loan and interest or provided such adequate security and/or collateral, it was entitled to exercise the Purchase Option and buy the Preferred Interests from Levona, subject only to truing up the value of the ships (the Symi and the Telendos) to $23,000,000. But if the Company could not repay the loan and interest or provide such adequate security, then it did not have the option of buying the Preferred Interests from Levona. In that situation, Levona, as consideration for the unexercised option, would retain the Preferred Interests and the attendant control over the Company, as well as its interests in the Symi and the Telendos.

Like the LLCA, the BOL contained a provision stipulating to the applicable law that would be used to adjudicate disputes, as well as a mandatory arbitration provision. But the law to be applied, as well as the terms of where and how any arbitration would occur, were different

from those set forth in the LLCA. Arbitration to resolve disputes arising from the BOL was to proceed as follows:

> This Letter and the negotiations between the parties in connection with the contents hereof, including but not limited to the proposed purchase of the Shares, grant of the Purchase Option and advance of the Loan and any disputes and claims arising out of or in connection with them and their formation (including non-contractual claims and disputes), shall be governed by and construed in accordance with English law and shall finally be resolved by arbitration in accordance with the rules of arbitration of the London International Centre for Arbitration applicable at the time of conclusion of this letter (the "Rules") by one arbitrator to be appointed in accordance with the Rules. The seat of the arbitration shall be London, United Kingdom. The language to be used in the arbitral proceedings shall be the English language.

Id. § 10. The mandatory arbitration provision in the BOL did not supersede the mandatory arbitration provision in the LLCA.

In short, the BOL provided that Levona would be provided $23,000,000 (partially in the form of the two ships), in exchange for a loan of $10,000,000 and, if that loan and any interest accrued on it was repaid, or if adequate security or collateral was provided to Levona, the Company could exercise an option to buy out Levona's stake in the Company by acquiring the Preferred Interests.

On March 11, 2022, Levona and the Company executed a series of contracts to give effect to the terms outlined in the BOL (the "Transaction Documents"). Pursuant to the agreement contemplated in the BOL to transfer two Company vessels to Levona, the parties executed the Share Transfer Agreement ("STA"). Dkt. No. 67-12. The STA provided that the Company would sell its interests in the Symi and the Telendos vessels and that "[t]he consideration for the sale and purchase of the Shares [in the vessels] shall be as set out in the [BOL]." *Id.* § 3.1. It contained an integration clause providing that the STA "together with the [BOL] constitutes the entire agreement between the Parties regarding the sale and purchase of the Shares [in the vessels] and related matters." *Id.* § 7.1.

The same day, the parties also executed several other agreements to effectuate the terms contemplated by the BOL. The parties entered into an Intra-Group Loan Agreement, pursuant to which Levona provided to the Company a loan facility of up to $10,000,000 for a term of up to two years. Dkt. No. 67-58 at 8. The parties agreed, through a Fundamental Action Letter, that while the loan was outstanding, Eletson would "[c]o-operate with any Fundamental Action . . . proposed by Levona." Dkt. No. 55-4 at 15. Before the parties entered into the Fundamental Action Letter, "Fundamental Actions" as defined in the LLCA—including the Company's acquisition and disposition of vessels and other assets worth more than $1,000,000—were the only acts over which Levona could not already exercise complete control as the holder of the Preferred Interests. By providing that Eletson would cooperate with "Fundamental Actions" that Levona wanted to take, the Fundamental Action Letter transferred virtually unfettered control over the Company's affairs to Levona. The parties also entered into an Assignment of Claims agreement, as contemplated by the BOL, pursuant to which Corp assigned to Levona all of its claims against the Company and any of its vessels. Dkt. No. 67-58 at 9. Relatedly, the parties entered into a Deed of Waiver and Release, pursuant to which specified outstanding claims against the Symi and Telendos were released by certain Eletson entities.

On the same day that the parties executed the Transaction Documents, March 11, 2022, the Board of Directors of the Company unanimously approved the STA, the Loan Agreement, and the Fundamental Action Letter in a written memorandum ("Written Consent"). Dkt. No. 67-13. The Written Consent summarized the terms of the BOL with respect to the sale of two of the Company's vessels to Levona "in consideration of the grant of a purchase option to the Company over the shares held by Levona in the Company," and with respect to the "fixed term unsecured loan facility advanced by Levona to the Company of []$10,000,000." *Id.* The Written Consent

ratified the BOL and all of the ancillary contracts, and authorized the Eletson Directors on the board to sign, execute, and deliver the STA and the Loan Agreement on behalf of the Company. *Id.* at 2.

After signing the Transaction Documents, the Company and Levona continued to work in concert to navigate the Company's financial challenges. Dkt. No. 67-48 at 38. A March 9, 2022 cash forecast prepared by the CFO of Corp, Peter Kanelos, projected that the Company would be out of cash by April 7, 2022, and again by April 12, 2022. *Id*. In light of this projection, the parties amended the loan to increase the amount available to the Company to $14,000,000. Dkt. No. 67-58 at 9.

The parties dispute the effect of these agreements and specifically whether they constitute an exercise of the Purchase Option, and thus whether the Company bought out Levona's Preferred Interests in the Company. Holdings and Corp contended in the arbitral proceedings that these contracts satisfied the Purchase Option and effectuated the Company's purchase of the Preferred Interest from Levona, and thus nullified Levona's membership interest in the Company. Dkt. No. 67-24 at 13–14. Accordingly, Petitioners argued, Levona's later attempt to sell some of the Company's assets was improper, because Levona, having allegedly sold off the Preferred Interests, no longer had the authority to control the Company or its assets. *Id.* at 14. In response, Levona contended that the transfer of the ownership shares of the vessels was consideration for the Purchase Option, but did not itself constitute an exercise of the Purchase Option. Dkt. No. 67-17 at 8. If the conditions for exercise of the Purchase Option were not satisfied, Levona would retain the Preferred Interests *and* retain the ownership shares of the vessels. Pointing to the lack of a written notice to exercise the Purchase Option, and lack of repayment of any portion of the Loan, Levona contended that the Company never exercised the

Purchase Option and thus that Levona properly retained managerial control over the Company. *Id.*

About four months after the Transaction Documents were executed, on July 15, 2022, Levona—purporting to act on behalf of the Company—signed a non-binding Letter of Intent with Unigas (the "Unigas LOI")—the Company's primary competitor—to sell Unigas nine of the Company's twelve remaining vessels for $262,000,000. Dkt. No. 67-58 at 9. The two Eletson representatives on the Company's Board of Directors were not consulted before the Unigas LOI was signed, and were only informed of the agreement when a Levona representative sent the Unigas LOI to the Company's Board of Directors via email and directed them to accept its terms. Dkt. No. 67-24 at 16. Less than one week later, on July 21, 2022, one of the Levona representatives on the Board of Directors circulated notice for a Company Board Meeting to be held on July 26, 2022. *Id.* The Eletson representatives on the Board of Directors responded that the notice of the meeting was deficient for several reasons, such as the fact that the notice of the meeting did not specify the purpose of the meeting. *Id.* at 17. The Levona-appointed representative then circulated a new notice for a meeting of the Board of Directors of the Company to be held on July 28, 2022, and this time included a statement of the purpose of the meeting, which included certain actions to be taken in furtherance of the Unigas LOI. *Id.* After the Eletson Directors again responded that the notice was deficient and that they would not attend the meeting, the Levona directors stated that the meeting would nevertheless proceed, and ultimately held the meeting. *Id.*

III. The Commencement of the Arbitration and Jurisdictional Issues

On July 29, 2022, Holdings and Corp submitted a statement of claims and demand for arbitration against Levona in New York pursuant to the mandatory arbitration provision of the LLCA. Dkt. No. 67-16; Dkt. No. 65 ¶ 40; Dkt. No. 66 ¶ 40. Petitioners alleged that Respondent

breached the LLCA "and its express and implied duties thereunder" by, *inter alia*, purporting to act on behalf of the Company and in that capacity "actively trying to strip the Company of substantially all of its assets for less . . . than fair market value and for [Respondent's] selfish and personal gain." Dkt. No. 67-16 at 2. In particular, Petitioners alleged that Respondent granted the Company and Corp the Purchase Option, *id.* ¶ 13, that the Company had exercised the Purchase Option and effectuated the buy-out of the Preferred Interests, *id.,* that Respondent accordingly had no power or authority to act on behalf of the Company, *id.*, and that notwithstanding its absence of authority, and in violation of its duties under the LLCA, Respondent had attempted to effect a sale of nine of the Company's twelve vessels at fire-sale prices, *id.* ¶¶ 18–20. Eletson also included in its statement of claims its allegations that the Eletson-appointed Directors on the Company's Board had refused to sign off on the sale of nine of its twelve vessels, and that Respondent had improperly purported to call a meeting of the Company's Board of Directors to circumvent the Eletson-appointed Directors. *Id.* ¶¶ 21–29. Among other relief, Petitioners sought "[a] declaration that [Petitioners] have complied with all obligations necessary to complete the buyout purchase option and that the option has been executed," and injunctive relief against Respondent continuing to act on behalf of the Company. *Id.* at 8. Petitioners also sought an award of "[c]ompensatory damages for all the harm caused to the Company and/or Claimants by reason of Levona's misconduct," as well as punitive damages. *Id.* at 8–9. On August 16, 2022, pursuant to the LLCA, JAMS appointed Justice Belen to act as sole arbitrator of the dispute. Dkt. No. 62 ¶ 12.

On August 19, 2022, Levona filed its Response to the Statement of Claims and Statement of Counterclaims. *Id.* ¶ 13; Dkt. No. 67-17. Levona contested the jurisdiction of the arbitrator on the ground that the LLCA arbitration provision that Petitioners invoked—which provided for

arbitration in New York under the laws of the Marshall Islands and Delaware—could not control the parties' dispute, which, Levona contended, arose from the BOL. Dkt. No. 67-17 ¶ 1. It contended that the "crux" of the matter—the issue which underpinned all of Eletson's claims—was whether the Company had exercised the Purchase Option as provided for in the BOL, and thus that the dispute could only be resolved by an adjudication of the BOL in London under English law pursuant to the BOL's arbitration provision. *Id.* ¶¶ 1, 2. Levona also asserted counterclaims. It asserted that Eletson (both Holdings and Corp) had mismanaged the Company and failed to take care of its needs in violation of its obligations under the LLCA, the BOL, and the Loan Agreement. *Id.* ¶¶ 24–28. Specifically, Levona alleged that Eletson had breached the provision of the BOL requiring it to agree to Fundamental Actions directed by Levona as long as the loan remained outstanding. *Id.* ¶ 25. It alleged, as an example of Eletson's management failures, that Eletson had prevented the financier responsible for the March 2022 refinancing of selected LPG vessels from placing a mortgage on five of the vessels as desired, resulting in an increase in the interest margin rate and higher interest payments. *Id.* ¶ 28. It also alleged that Eletson had interfered with Levona's sale of the Symi and Telendos vessels, which Levona had acquired pursuant to the STA. *Id.* ¶¶ 29–34. And finally, Levona alleged that, as the sole holder of the Preferred Interests and pursuant to the LLCA and the Fundamental Action Letter, it had the right to sign the Unigas LOI and that Eletson had interfered with Levona's efforts to make the sale on behalf of the Company. *Id.* ¶¶ 35–41. Levona sought an order requiring Eletson agents to vacate the Symi and Telendos, declaratory judgment that the Purchase Option was not exercised, declaratory judgment that it retained the Preferred Interests, declaratory judgment that it was authorized to execute the Unigas LOI, and "[c]ompensatory damages for all the harm

caused and continuing to be caused to the Company and Levona by way of [Petitioners'] mismanagement, breach of contracts, and tortious behavior." Dkt. No. 67-17 ¶ 48.

On September 12, 2022, Levona moved to strike Eletson's claims, asserting that the claims were not within the jurisdiction of JAMS as it had in its initial response. Dkt. No. 67-18 at 3. On September 30, 2022, Justice Belen issued an order denying Levona's motion, holding that "the arbitration provision in the [LLCA] is broad, encompasses the claims asserted, and the parties agree that this arbitration provision was not replaced or superseded by the arbitration [provision] in the Transaction Documents." *Id.* at 12. Justice Belen also found that Levona had waived its jurisdictional challenges when it availed itself of the JAMS forum by filing counterclaims. *Id.*

On October 10, 2022, Justice Belen issued a temporary restraining order ("TRO") providing that, during its pendency, "the parties hereto shall maintain the status quo and shall not, among other things: (1) engage in the transfer or sale of any assets of [the Company] . . . absent the joint written consent of the parties"; or "(2) notice or conduct of any board meetings for the purposes of proposing or considering transfer or sale of any assets of the Company." Dkt. No. 67-58 at 13–14.[3] On November 7, 2022, Justice Belen issued an order rejecting Levona's argument that the TRO did not apply to "the sale of the Symi and Telendos" because those vessels were no longer assets of the Company, having been transferred to Levona pursuant to the STA. The arbitrator held that "[a]ny attempt to sell or otherwise transfer the Symi and Telendos vessels will be deemed to be in violation of the TRO." *Id.* at 14.

[3] The LLCA empowers the arbitrator to grant injunctive relief. It states, in relevant part, that "[t]he parties agree that the arbitrator shall have authority to grant injunctive or other forms of equitable relief (including, without limitation, a temporary restraining order or preliminary injunction) to any party . . . to preserve such party's rights pending a final resolution on the merits." Dkt. No. 67-2 § 12.14(c).

On October 25, 2022, Eletson moved for a preliminary injunction, extending the TRO through the conclusion of the arbitration proceedings. Dkt. No. 31-20. In its application, it complained that Levona was attempting to sell the Symi and Telendos and to continue its efforts to sell the nine vessels to Unigas. *Id.* Levona cross-moved for injunctive relief, seeking an order requiring Eletson to comply with any directive provided to Eletson by Levona related to the Symi and Telendos and to cooperate in due diligence with respect to the sale of the nine vessels to Unigas. On January 12, 2023, the arbitrator issued a decision on the parties' cross-motions for preliminary injunctions and entered a preliminary injunction ("Status Quo Injunction") extending the TRO's prohibition on actions altering the status quo until further notice. Dkt. No. 67-58 at 14. The preliminary injunction stated that:

> The parties hereto shall maintain the status quo and shall not, among other things: (a) engage in the transfer or sale of, or attempt to sell or otherwise transfer, any assets of [the Company] . . . or assets in dispute in this arbitration, absent the joint written consent of the parties, which shall be sent to the undersigned Arbitrator, or (2) notice or conduct of any board meeting for the purpose of proposing or considering the transfer or sale of any assets of the Company or other assets in dispute in this arbitration.

Id.

On December 31, 2022, Eletson filed a Third Amended Statement of Claims and Response to Counterclaims. Dkt. No. 67-24. In its claims, Eletson sought a determination that Levona *never* had any lawful interests in the Company, that the assignment of the two entities owning Company vessels to Levona was procured by coercion, fraud, illegal, and other wrongdoing and is null and void, and that Levona not be considered an interest holder of the Company, or, in the alternative, specific performance of the Company's buy-out of Levona's Preferred Interests. *Id.* at 4. Eletson also sought compensatory and punitive damages and attorneys' fees. *Id.*; *see also id.* at 22–24. In particular, Eletson sought "compensatory damages

for all the harm caused to the Company and/or Claimants by reason of Levona's misconduct." *Id.* at 22.[4]

IV. The Debt Holder Litigation, Holdings' Bankruptcy and Related Arbitration Developments

On or about January 4, 2023, an affiliate under common ownership with Levona—Pach Shemen—purchased $183,851,546 in bonds of Holdings for $2,000,000, with an agreement that it would pay an additional $500,000 if the arbitration ended to Levona's satisfaction such that it was able to exercise its rights as holder of the Preferred Interests to sell the Company or its vessels. Dkt. No. 67-58 at 60. Thereafter, on January 11, 2023, Pach Shemen instructed the bond trustee, Wilmington Savings Fund Society, to sue Holdings to collect the debt due on the bonds. *Id*. Accordingly, that same day, a complaint was filed in this District by Wilmington Savings Fund Society, FSB against Holdings and two related entities (the "Bondholder Litigation"), alleging that the defendants had failed to make required quarterly interest payments on April 15, 2019 and each quarter thereafter, and had failed to repay principal and accrued interest on the maturity date of the bonds in violation of the terms of the notes and the indenture. *Wilmington Sav. Fund Soc'y, FSB v. Eletson Holdings Inc.*, CM-ECF No. 23-cv-261, Dkt. No. 1. On February 2, 2023, and again on March 8, 2023, the court in that case granted letter motions for an extension of time to answer. *Id.* Dkt. Nos. 18, 23. The case has since been stayed. *Id.* Dkt. No. 23.

On March 7, 2023, while the arbitration was pending and after the Bondholder Litigation had been filed, Pach Shemen and two other creditors of Holdings filed involuntary petitions for relief under Section 303 of Title 11 of the Bankruptcy Code, commencing involuntary Chapter 7

[4] On January 27, 2023, Respondent filed a Second Amended Statement of Counterclaims. Dkt. No. 67-25.

proceedings against Holdings and two of its affiliates in the Bankruptcy Court for the Southern District of New York. Dkt. No. 67-30. Levona notified the arbitrator of the bankruptcy proceedings that same day. *Id.* On March 8, Eletson submitted its own letter to the arbitrator, asserting that the automatic stay generated as a result of the involuntary petition against Holdings did not stay any of Eletson's affirmative claims or any of Levona's counterclaims against Corp, and that Eletson intended to move the bankruptcy court to modify the automatic stay so as to permit Levona's counterclaims against Holdings and the arbitration as a whole to move forward. Dkt. No. 67-32. Eletson argued that the arbitration should move forward as scheduled for April 24, 2023. *Id.* It ended its letter to the arbitrator: "[w]e fully preserve all of Claimants' rights, claims, and defenses. Levona's bad-faith bankruptcy filing, like its other bad-faith tactics, is causing Claimants serious harm." *Id.* On March 10, 2023, Eletson sent a second letter to the arbitrator in response to a suggestion by Levona that the arbitration and certain of Levona's deadlines in connection with the arbitration be delayed. Dkt. No. 67-33. Eletson accused Levona's affiliate, Pach Shemen, of procuring the involuntary bankruptcy to disrupt the arbitration and of making false statements to the arbitrator. *Id.* It noted that Levona's affiliate was the largest petitioning creditor in the bankruptcy proceeding, that Levona's designees on the Company's Board had signed the involuntary petition, and that Pach Shemen had acknowledged in the bankruptcy petition that one of its affiliates owned the balance of the equity interests in the Company and was engaged in mandatory arbitration concerning the ownership of the equity interests in the Company. *Id.* Eletson also asserted that Pach Shemen's purchase of the Holdings bonds constituted a violation of the arbitrator's Status Quo Injunction. Referring to a dispute the parties had with respect to documents, it stated: "Your Honor should insist on timely production of documents and expert reports. If Levona does not honor Your Honor's orders,

Claimants reserve the right to seek the most severe sanctions." *Id.* at 1. The same day, the arbitrator stayed the arbitration pending further order of the Bankruptcy Court. Dkt. No. 67-34. In his order, the arbitrator stated: "[Petitioners] argue . . . [that] the filing of the involuntary petition is *arguably* a violation of the status quo injunctive order." *Id.* at 2 (emphasis added).

On April 11, 2023, the petitioning creditors and the debtors in the bankruptcy case submitted a stipulation, which was signed by the Bankruptcy Court on April 17, 2023, permitting the existing claims then pending in the Arbitration to proceed (the "Lift Stay Order"). Dkt. No. 67-35. The relevant provisions are in paragraphs 3 and 4 of the Lift Stay Order:

> 3. The automatic stay under section 362(a) of the Bankruptcy Code is hereby modified with respect to the Arbitration solely to the extent necessary and for the sole purpose of permitting a trial, any related pre-trial proceedings (including any remaining discovery), any related post-trial proceedings or briefing, and a final determination or award to be made by the Arbitrator, including any appeals, with respect to the claims currently pending in the Arbitration . . . . The Arbitration Parties are authorized to provide a copy of this Stipulation and Order to the Arbitrator.
>
> 4. Any Arbitration Award, whether in favor of any Arbitration Party, shall be stayed pending further order of the Bankruptcy Court on a motion noticed following the issuance of the Arbitration Award. For avoidance of doubt, no Arbitration Party shall transfer, dispose of, transact in, hypothecate, encumber, impair or otherwise use any such Arbitration Award or any asset or property related thereto absent a further order of this Court.

Id. at 3–4. The Lift Stay Order recited that the parties to the arbitration were Holdings, Corp, and Levona and defined them as the "Arbitration Parties." *Id.* at 2.

On April 25, 2023, Eletson submitted to the arbitrator what it styled a "Supplemental Notice of Additional Levona Status Quo Injunction Violations." Dkt. No. 67-36. Eletson challenged (1) the filing in this court of the Bondholder Litigation, a claim for breach of contract by the trustee of notes issued by Holdings and two non-party affiliates due to the nonpayment of interest and principal and certain indemnified losses as a bad-faith filing "directed" by the "Levona Parties"; (2) the service of a Notice by that trustee, Wilmington Savings Fund Society,

FSB, terminating a "Restructuring Support Agreement" among the consenting noteholders; and (3) the filing by Pach Shemen and the two other creditors of the involuntary bankruptcy petitions against Holdings and its two non-party affiliates. *Id.* Eletson claimed that the Bondholder Litigation and the related purported termination of the Restructuring Support Agreement, as well as the involuntary bankruptcy petition initiated by Pach Shemen, violated the Status Quo Injunction and caused damages to Eletson generally and the Company specifically. *Id.* at 8–10. Eletson further accused Levona of misleading the arbitrator when it filed a letter to the arbitrator asserting that the arbitration was automatically stayed due to the bankruptcy petition, and that Levona had misled the arbitrator by stating in the letter that "Levona is not responsible for the bankruptcy nor does it own or control any party who filed the involuntary petition." *Id.* at 10. Eletson submitted evidence that Pach Shemen's owners were identical to Levona's owners and that Pach Shemen held itself out as "Levona II," as well as other evidence suggesting a close relationship between the entities. *Id.* at 12. Eletson stated that it intended "to include these violations and seek appropriate relief concerning them in the upcoming pre-hearing submissions and to adduce proof concerning them at the upcoming hearing, seeking such other and further relief as the Arbitrator deems fitting." *Id.* at 2. In the last numbered paragraph of the submission, Eletson took issue with the claim in the bankruptcy proceeding that the Preferred Interests were part of the bankruptcy estate. *Id.* at 16–17 ¶ 47. Eletson stated that:

> [A]s Levona knows, the preferred interests at issue here were, under the BOL, to be transferred to Gas or to a nominee, and, as Levona knows, the preferred interest was transferred at the time of the BOL and the subsequent March 2022 transactions to such nominees. Part of the relief Claimants seek here is confirmation that Levona has no interest in that preferred and that the nominees from Gas do.

Id. This statement was the first time that Eletson asserted in the arbitration that the Preferred Interests were transferred to a nominee. Previously, in an October 25, 2022 affidavit submitted in the arbitration, Eletson claimed that Eletson had exercised the Purchase Option and was the

sole unit holder of the Company. Dkt. No. 67-20 ¶¶ 2, 9. Eletson made the same claim in memoranda of law submitted to the arbitrator on October 25, 2022, November 8, 2022, and November 18, 2022. Dkt. No. 67-21 at 10; Dkt. No. 67-22 at 6; Dkt. No. 67-23 at 11. But Eletson did not, until April 2023, state that the Company had transferred the Preferred Interests to a nominee.

Ultimately, Holdings and the other debtors agreed to convert the bankruptcy case to a voluntary Chapter 11 case, to withdraw a motion they had previously made in the bankruptcy case that the involuntary bankruptcy case had been filed in bad faith, and agreed not to object to the payment of attorneys' fees to the petitioning creditors from the bankruptcy estate in an amount up to $1,500,000. Dkt. No. 65 ¶¶ 132–134. On September 25, 2023, the bankruptcy court converted the involuntary bankruptcy proceeding to a Chapter 11 voluntary bankruptcy case. *Id.* ¶ 135. On November 13, 2023, the bankruptcy court approved an award of $1,500,000 in attorneys' fees that the petitioning creditors, including Pach Shemen, had incurred in filing and prosecuting the involuntary bankruptcy case. *Id.* ¶ 174.

V. The Arbitration Hearing

The arbitration hearing commenced on May 15, 2023. Dkt. No. 67-58 at 19. On May 3, 2023, in advance of the hearing and before the submission of the parties' Pre-Hearing Briefs, the parties stipulated that the schedule for the hearing was "fair and reasonable and waive[d] any objection to the schedule ordered or otherwise determined by the arbitrator." Dkt. No. 67-39 at 4. The parties further stipulated "that each has no challenge or objection to the arbitration on fairness grounds or on the basis that it has not been granted enough time to prepare for or present its case." *Id.* Procedural Order Number 6 identified the parties to the arbitration as those stated in the caption (*i.e.*, Holdings, Corp, and Levona), and the claims as those set forth in the Demand

for Arbitration and the Statement of Claims as well as those in Levona's Response to the Statement of Claims and Counterclaims. *Id.* at 1, 4.

In its Pre-Hearing Brief submitted on May 5, 2023, Eletson asserted that the Preferred Interests were not bought out by the Company but were transferred to nominees chosen by Eletson in March 2022. Dkt. No. 67-38. It stated: "[t]he preferred interests in this arbitration, from their issuance up until the execution of the BOL and even thereafter, were never owned or controlled, directly or indirectly" by Eletson, the Company or "any other entity directly or indirectly affiliated with any of those entities," *id.* ¶ 100, but that "[f]rom January 2022, at the latest," the owners of Eletson had determined to nominate three Cypriot entities (the "Nominees")—each related to the three families who own Eletson—to hold the Preferred Interests, *id.* ¶ 103. Eletson asked that the arbitrator confirm that the Nominees held the Preferred Interests in the Company. *Id.* ¶ 208(ii). Eletson also made a claim for "rescissory damages relating to the transfer of the Symi and Telendos to Levona, including that the proceeds of any sale of the Symi and Telendos and revenue related thereto paid to Claimants/the Company." *Id.* ¶ 50. Further, Eletson sought "punitive and other damages" for Levona's conduct that it alleged violated the Status Quo Injunction. *Id.* ¶ 51.

On May 10, 2023, Levona moved to strike Eletson's allegations that the Preferred Interests had been transferred to the Nominees, or in the alternative to dismiss Eletson's claims in chief. Dkt. No. 67-40. Levona argued that Eletson had improperly alleged that the Preferred Interests had been transferred to the Nominees for the first time on the eve of the hearing, with only specious evidence in support of the allegations, and in complete contradiction of Eletson's

prior assertions about the holders of the Preferred Interests.[5] *Id.* Levona suggested that Eletson had contrived the allegation that the Preferred Interests had been transferred to the Nominees to ensure that the Preferred Interests were not considered part of the bankruptcy estate in the bankruptcy litigation and thereby "avoid the consequences of a negative decision in the Bankruptcy Court." *Id.* at 4. Put differently, on Levona's account, Eletson only suggested that the Preferred Interests had been transferred to the Nominees at such a late stage because Eletson did not have an incentive to make such an assertion until after the bankruptcy proceeding against Holdings had been initiated. *Id.* Prior to the initiation of the bankruptcy proceeding, Holdings could retain the Preferred Interests by winning the arbitration; after the initiation of the bankruptcy proceedings, however, any arbitral award to Holdings would become an asset of the bankruptcy estate, such that if the Preferred Interests were included in the arbitral award, the Preferred Interests would be distributed to Holdings's creditors. *Id.* If the Preferred Interests had been transferred to the Nominees, however, they would remain remote to the creditors in the bankruptcy proceeding. Levona also argued that, if the Cypriot entities were the Nominees, they would be the real parties in interest and would be required to be made parties to the arbitration and that Eletson would not have standing. The arbitrator did not rule on Levona's motion until after the hearing. Dkt. No. 67-58 at 30.

During the eight-day hearing beginning on May 15, 2023, Eletson and Levona presented the testimony of their representatives, expert witnesses, and others. *Id.* ¶ 20. In his opening statement at the arbitration, counsel for Petitioners stated that he wished to address "how we might structure relief here so that it's effective so that we don't wind up going through all this

[5] Levona specifically argued that it would be prejudicial to allow Eletson to introduce documents regarding the transfer without allowing Levona any discovery. Dkt. No. 67-40 at 5.

and your Honor will come to toil and struggle to come to a decision and then Levona and its affiliates will render it nugatory" and sought to prevent Levona from arguing that "even if [Petitioners] win in this proceeding, [the recovery] goes back into Holdings" because "the bankruptcy allows them to take it." Dkt. No. 67-42 at 4–5, 6.

The arbitration hearing continued on May 16, 18, 19, 22, 23, and 24, and the arbitrator heard closing arguments on June 13, 2023, at which point he deemed the record closed. Dkt. No. 65 ¶ 118; Dkt. No. 66 ¶ 118. At the hearing, representatives of the Nominees submitted written testimony in which they stated that Eletson had told Levona that it intended the Preferred Interests to go to the Nominees of the Company and that "[a]ny conclusion by the Tribunal in this Arbitration" would "bind" them. Dkt. No. 67-41 at ¶¶ 101, 103; Dkt. No. 67-43 ¶¶ 194, 196; Dkt. No. 67-45 ¶ 104. At the conclusion of the hearing, the parties consented to a fifteen-day extension of the thirty-day deadline under the JAMS Rules for issuance of an award. Dkt. No. 62 ¶ 21.

In early June 2023, both sides submitted to the arbitrator their post-hearing briefs, Dkt. No. 67-48; Dkt. No. 67-50; and their proposed arbitral award orders, Dkt. No. 67-47; Dkt. No. 67-49. In their proposed order, Petitioners requested an award of damages solely and directly to the Nominees and to the Company—non-parties to the arbitration—with no damages paid directly to either Petitioner. Dkt. No. 67-47. On July 11, 2023, while awaiting the arbitrator's decision, Levona applied to the arbitrator to order Eletson to produce what Levona claimed was material new information that had been produced by Holdings in the bankruptcy proceedings. Construing the request as one to reopen the hearing, the arbitrator denied that request as both procedurally and substantively flawed on July 18, 2023. Dkt. No. 67-52.

VI. The Interim Ruling and Final Award

On July 28, 2022, Justice Belen issued an "interim" ruling and award ("Interim Award") in Eletson's favor, and on August 15, 2023, Justice Belen issued the Corrected Interim Award. Dkt. No. 67-55. On September 29, 2023, Justice Belen issued a Final Award. Dkt. No. 67-58. The Interim Award and Corrected Interim Award resolved all issues submitted for decision in the arbitration, except those relating to the parties' requests for attorneys' fees, costs, expenses and pre-judgment interest. Dkt. No. 62 ¶ 23.[6] The Final Award adopted, incorporated, and republished the Corrected Interim Award in its entirety and integrated the arbitrator's subsequent determinations regarding the parties' requests for attorneys' fees, costs, expenses and interest. *Id.* ¶ 28.

The arbitrator grouped Eletson's claims that Levona breached the LLCA and the implied covenant of good faith and fair dealing into four categories: (1) claims that Murchinson engaged in deceitful and wrongful conducted that voided *ab initio* Levona's acquisition of Blackstone's Preferred Interests by bribing Corp's Chief Financial Officer to induce him to disclose confidential Company information, and by communicating directly with Company financiers and lenders, thus engaging in "industrial sabotage" prior to Levona's acquisition of the Preferred Interests, in violation of the NDA that Levona had entered into with Blackstone; (2) claims that Levona breached the LLCA after its acquisition of the Preferred Interests and before entering into the BOL by attempting to fire Corp as the manager of the Company's vessels and by failing

[6] On August 14, 2023, Justice Belen issued a ruling rejecting Levona's argument that the Interim Award was not an award subject to JAMS Rule 24, which governs finality, but granted Levona an extension under the JAMS rules to identify "any computational, typographical or other similar error in the Interim Award." Dkt. No. 62 ¶¶ 24–25. Justice Belen found "absolutely no merit to Respondent's argument that the Interim Award was not a final determination with respect to all the issues and arguments raised in this arbitration relating to the merits of the claims and counterclaims." *Id.* ¶ 25.

to disclose its pre-acquisition misuse of confidential information; (3) claims that Levona and "Levona-related entities"—Pach Shemen and Murchinson—violated the Status Quo Injunction on numerous occasions, including by wrongfully declaring the Company in default of the loan made by Levona to the Company, trying to sell the Symi and Telendos, directing the purchase of a controlling position in debt securities of Holdings for the purpose of commencing litigation against Holdings and the involuntary bankruptcy of Holdings; and (4) claims that Levona breached the LLCA and the covenant of good faith and fair dealing by failing to transfer its Preferred Interests in the Company in accordance with the BOL and continuing to act on behalf of the Company in "complete bad faith" including by entering into a letter of intent with Unigas. Dkt. No. 67-58 at 9–11.

Levona, on the other hand, sought a declaration that it remained the holder of the Preferred Interests, and claimed that Eletson had breached the LLCA and Fundamental Action Letter by failing to attend board meetings (thereby preventing the Company from refinancing debt and engaging in due diligence in connection with the Unigas LOI), had tortiously interfered with the Company's LOI with Unigas, and had engaged in conversion for denying Levona the ability to sell the Symi and Telendos. *Id.* at 11.

The arbitrator recognized that resolution of the majority of the claims and counterclaims turned upon the interpretation of the Transaction Documents and whether the Company exercised the Purchase Option to buy Levona out of the Preferred Interests. *Id.* at 9. If the answer to that question was yes, then at some point Levona was no longer a member of the Company and did not have rights under the LLCA to enter into the Unigas LOI or otherwise act on behalf of the Company. If the answer was no, then Levona would have remained a member

of the joint venture and Eletson may have violated its obligations under the LLCA by refusing to, *inter alia*, engage in due diligence relating to the Unigas LOI. *Id.*

As a preliminary matter, Justice Belen found that Murchinson and Pach Shemen were alter egos of Levona. He found that the evidence demonstrated "conclusively that although technically two separate corporate entities, Murchinson and Levona are not distinct for any purposes relevant to these proceedings," and that while Levona, which was a shell entity, might "be the named party, Murchinson is the real party in interest." *Id.* at 21. He thus concluded that "any ruling . . . in this arbitration extends to Murchinson. Any award in favor of Levona is really in favor of Murchinson, and similarly, any award finding liability and damages against Levona, is owed by Murchinson." *Id.* He reached the same conclusion as to Pach Shemen, which he found had the identical ownership of Levona and was "seemingly created for the sole purpose of purchasing a controlling interest in the outstanding bond debt of Holdings so that three weeks later, it could direct the involuntary bankruptcy filing against Holdings." *Id.*

The arbitrator also denied Levona's motion to strike Eletson's claims that the Purchase Option had been exercised and that the Preferred Interests had been transferred to the Nominees, or alternatively to dismiss the claims. *Id.* at 30. He acknowledged that the lack of earlier written notice to Levona of the contingent transfer of the Preferred Interests to the Nominees had initially "raised concern," but concluded that there was no "bad faith or misconduct" in the failure to give notice as "the Eletson witnesses viewed the Company as a family company," "representatives from each of the Preferred Nominees . . . testified that they are bound by any award in th[e] arbitration," and that "Levona was not prejudiced by the later reference to the

Preferred Nominees." *Id.* at 30–31.[7] The arbitrator noted that "Eletson witnesses testified that from the outset of the time that the parties began discussing the buyout of Levona's interests, Eletson intended the preferred units to go to nominees of the Company, and that it told Levona of this intention." *Id.* at 27. The arbitrator stated that Eletson's explanation for why the transfer to the Nominees was not mentioned earlier in the proceedings was credible: "It was only after the Levona-related entities including . . . Pach Shemen made clear in the Holdings bankruptcy that they would attempt to use the bankruptcy proceedings as an end-run around against any adverse award in this arbitration by claiming that the preferred shares were part of the bankruptcy estate of Holdings, that Eletson felt compelled to set the record straight and make clear that . . . Holdings was never intended to directly or indirectly, as owner of the common shares of the Company, own the preferred shares." *Id.* at 31.

Justice Belen next concluded that the Company properly exercised the Purchase Option for the Preferred Interests because it had paid Levona the Purchase Option Consideration and had provided adequate security and/or collateral for the Loan.[8] *Id.* at 34–42. He concluded that the Company paid Levona the Purchase Option Consideration when, pursuant to the Share Transfer Agreement, on March 11, 2022, it transferred the ownership shares of the Symi and Telendos to Levona. *Id.* Levona had argued that the transfer of vessels was the consideration for the Purchase Option itself, rather than the Purchase Option Consideration payable upon the exercise of Purchase Option. Justice Belen rejected that argument. *Id.* He reasoned that because Section 2.1 of the BOL provided that "consideration equal to the Purchase Option Consideration" would

[7] The arbitrator noted that "Levona never sought additional discovery nor requested depositions on the issue of the nominees before or during the arbitration hearing" and "did not conduct any meaningful cross-examination of the three Eletson witnesses who testified about the contingent transfer to the Preferred Nominees or present any contradicting evidence." *Id.* at 31–32.

[8] It was not disputed that the loan remained outstanding and had not been fully repaid. *Id.* at 34.

be paid "on completion of the transfer of the Membership Interests," the BOL contemplated that the Purchase Option Consideration would be paid in exchange for the Preferred Interests and not in exchange for the *option* to purchase the Preferred Interests. *Id.* In his view, that conclusion was consistent with the terms of the LLCA, which prohibits Members (including Levona as the holder of the Preferred Interests) from acquiring or owning any vessels such as the Symi and Telendos. *Id.* at 35. It was only if the Purchase Option was exercised and Levona was no longer a member of the Company that Levona could, consistent with the LLCA, acquire the two vessels.[9] Justice Belen further concluded that the transfer of the Symi and Telendos was adequate consideration because the Net Value of those ships was in excess of $23,000,000, and thus more than the Purchase Option Consideration amount contemplated in the BOL of $23,000,000 less the value of the two ships. *Id.* at 37.

Justice Belen also found that Eletson satisfied the additional conditions for exercising the Purchase Option. Although it was undisputed that Eletson had not repaid the loan to Levona, the arbitrator found that the Company had met the alternative basis outlined in the BOL for exercising the Purchase Option by providing "adequate security and/or collateral." *Id.* at 38–42. He rejected Levona's argument that the Purchase Option could not be exercised without Levona's determination that it had been afforded adequate security or collateral for the Loan, reading the relevant section of the BOL to provide only that the adequacy of the security, not the adequacy of the collateral, would be at Levona's sole discretion. Dkt. No. 67-58 at 39. Justice Belen read the word "adequate" to modify only "security" and not collateral. *Id.* And he concluded that Eletson had provided adequate collateral by assigning Corp's claims against the

[9] The arbitrator also pointed to parol evidence that the parties contemplated that the consideration to be paid to Levona for its interests in the Company was $23,000,000. *Id.* at 36–37.

Company to Levona, despite the fact that the BOL, independent of any collateral, required Eletson to transfer Corp's claims against the Company until the loan was paid off in full and that, in any event, Levona's rights under the loan were senior to the claims by Corp. *Id.* at 38. Justice Belen rejected Levona's contention that it required the assignment of claims not as collateral for the Loan, but as a separate protective measure to prevent Corp from attempting to repay itself before the Company repaid the Loan. *Id.* at 39. He also concluded that the assigned claims constituted adequate collateral because at the time of the assignment their value exceeded $10,000,000. *Id.* at 40.

Justice Belen further found that notice of intent to exercise the Purchase Option was properly provided. Although he found that Eletson did not provide separate formal written notice of exercising the Purchase Option to Levona as required by the BOL, he also found that Levona was on actual notice of the Purchase Option's exercise based on the minutes of a March 10, 2022 Company Board of Directors meeting which contained a reference to an "[u]pdate on Eletson's intention to exercise the purchase option." *Id.* at 42. Based on that language, and the testimony of an Eletson witness that for Eletson, "intention means the actual fact," the Company had, in practice, provided sufficient notice. *Id.* The arbitrator additionally concluded that Eletson had engaged in conduct after March 11, 2022, the date that the Transaction Documents were signed, that was consistent with a buyout by assisting Levona in the sale of the two vessels to third parties, reflagging the vessels from Greece to Liberia, and novating the underlying bareboat charters to Levona's interests. *Id.* at 44. The arbitrator also noted that after that date, Eletson held itself out to be the sole shareholder of the Company and the sole beneficial owner of its remaining twelve vessels, even though the Directors that Levona had named to the Company Board, pursuant to its authority as the holder of the Preferred Interests, remained on the Board

well past March 11. *Id.* He concluded that "[a]t best, the absence of a written notice and a payment of $1 dollar [required by the BOL] are formalities that the parties failed to observe." *Id.* at 45.

Justice Belen concluded that since the conditions for the buyout were met, the Preferred Interests had been transferred to the Company or the Nominees and that, as of March 11, 2022, Levona no longer held the Preferred Interests and ceased to have any ownership interest in the Company. *Id.* at 46. The determination that the Purchase Option was properly exercised and that Levona ceased to have any ownership interest in the Company informed a number of the remainder of Justice Belen's conclusions. Specifically, he concluded that Levona did not have the authority, once it ceased holding the Preferred Interests, to enter into the Unigas LOI, direct the operations of the Company, or otherwise assert control over the assets of the Company. *Id.* at 47.

Having reached the determination that Eletson properly exercised the Purchase Option and that therefore Levona no longer held preferred interests in the Company, the arbitrator turned to the substantive claims. With respect to Eletson's pre-BOL claims, Justice Belen concluded that: (1) he had no jurisdiction over any claims related to conduct before November 2, 2021, when Levona and the Levona-related entities were not parties to the LLCA, and that such entities also could not have breached the terms of the LLCA or the covenant of good faith and fair dealing implied in it for pre-November 2, 2021 conduct, *id.* at 49; and (2) although there was "sufficient evidence" that Murchinson engaged in underhanded tactics and dishonest dealings to acquire Blackstone's interests in the Company, Eletson was not entitled to have Levona's acquisition of those interests voided *ab initio*, *id.* The arbitrator thus rejected Eletson's pre-BOL claims against Levona and the Levona-related entities.

Moving to Eletson's claims regarding Levona's conduct after becoming a signatory to the LLCA, but before entering into the BOL, Justice Belen ruled for Eletson. He found that in the time period after Levona acquired the Preferred Interests and became a member of the Company pursuant to the LLCA in November 2021, and before the BOL was entered into in February 2022, Murchinson bribed Peter Kanelos, the CFO of Corp and a representative of the Company, breached the terms of its NDA with Blackstone, and disclosed confidential Company information in violation of the LLCA and the covenant of good faith and fair dealing. *Id.* at 51. Levona and Murchinson had executed what was called a "Services Agreement" with Kanelos in December 2021 pursuant to which Murchinson wired $100,000 to Kanelos. *Id.* The arbitrator concluded that Kanelos was an officer of the Company, and not just Corp, and that, as a result, Levona and Murchinson's conduct violated a provision of the LLCA that barred Levona from entering into any agreement with an officer or member of senior management of the Company. *Id.* The arbitrator found that Kanelos had clandestine communications with Murchinson before and after Levona's acquisition of the Preferred Interests, contrary to his duties as an officer of Eletson and of the Company, and that he and Murchinson actively concealed their communications. *Id.* at 23–24. Justice Belen also found that Murchinson breached its NDA with Blackstone by communicating directly with the Company's financiers and lenders. *Id.* at 51. Justice Belen further found "Murchinson/Levona continued to disclose confidential information in breach of the LLCA, without Eletson's and the Company's knowledge, and without NDAs, after Levona purported to join the Company." *Id.* at 53–54. Justice Belen found that "Levona breached the covenant of good faith and fair dealing by causing the Company's lenders to arrest five vessels and failing to disclose this conduct after it became a member of the Company." *Id.* at 54. He determined: "Murchinson's improper dealings with the Company's banks and

financiers pre-acquisition of Blackstone's interests caused the arrests of the vessels and that its failure to disclose these actions to Eletson once it became a member in the Company was a breach of the covenant of good faith and fair dealing." *Id.* at 56. And, the arbitrator found that Levona breached the LLCA by attempting to terminate the Company's management agreement with Corp and by attempting to replace the boards of directors of the Company's subsidiaries with Levona's preferred representatives. *Id.* at 58.

Next, Justice Belen found that "Levona-related entities," namely Pach Shemen, had violated the Status Quo Injunction by purchasing a controlling interest in outstanding bonds issued by Holdings, directing the trustee to commence litigation against Holdings, and then directing the commencement of an involuntary bankruptcy petition against Holdings. *Id.* at 59–62. Justice Belen found that, in those ways, Pach Shemen intended to disrupt the status quo and ensure that it would retain the Preferred Interests and be able to use them to control and profit from the sale of the vessels; either the involuntary bankruptcy would strip the arbitrator of jurisdiction or, if not, it would operate as a hedge against a potential loss in the arbitration. *Id.* at 61. On the assumption (which Justice Belen elsewhere found to be faulty) that the Preferred Interests would pass to Holdings in the event of an arbitral ruling in its favor, Pach Shemen as a creditor of Holdings would nonetheless be able to use the bankruptcy proceeding to obtain the Preferred Interests. *Id.* at 61. Finally, Justice Belen rejected Levona's counterclaims based on his finding that Eletson exercised the Purchase Option and bought out the Preferred Interests as of March 11, 2022. *Id.* at 62.

Justice Belen awarded compensatory damages against Levona, and against Murchinson and Pach Shemen as Levona's alter egos, jointly and severally, to the Nominees in the amount of $19,677,743.71 and to the Company in the amount of $23,777,378.50. *Id.* at 100. The damages

included $19,677,743.71 for the loss of the two vessels that Levona caused to be improperly transferred. *Id.* at 63–64. The arbitrator concluded that those damages should be paid directly to the Nominees "as they flow directly from Levona's refusal to relinquish the preferred interests, and the Preferred Nominees hold all title and interest in the preferred interests." *Id.* at 64. He also awarded $21,777,378.50 to the Company for losses arising from Levona's conduct that led to the vessel arrests. *Id.* at 64. He awarded another $2,000,000 to the Company for the (1) reduced bargaining position of the Company with business-sensitive information available to other parties, including those negotiating with the Company; (2) reputational harm to the Company and Eletson from the actions of Levona and its affiliates with financiers and banks but also with customers, employees, and vendors; (3) lost business opportunities, both with existing customers and with new customers, as a result of the reputational harm; (4) Eletson's loss of access to both existing and new sources of capital; and (5) permanent harm from the "indelible record created by Levona and its affiliates." *Id.* at 65–67.[10] The arbitrator further awarded Eletson reimbursement of the attorney's fees and costs incurred in connection with the trustee litigation in the Southern District of New York and the involuntary bankruptcy proceeding in the amount of $3,007,266.20 "to be paid to the entity or individuals who paid those costs and fees." *Id.* at 67, 75. Justice Belen also awarded $43,455,122.21 in punitive damages to be paid to the same entities awarded the underlying compensatory damages. *Id.* at 73.

In addition to the compensatory and punitive damages, Justice Belen awarded Eletson attorneys' fees, expenses and costs for the arbitration of $9,590,222.99. *Id.* at 86. The attorneys' fees and costs awarded included fees and costs incurred in connection with the arbitration, a

[10] Justice Belen awarded the Petitioners prejudgment interest at a contractual rate of ten percent per annum. *Id.* at 73.

success fee owed by Eletson to counsel for Eletson, and fees and costs in connection with the bankruptcy and bondholder litigation, but did not include costs incurred in connection with a state court action that Eletson commenced against Murchinson. *Id.* at 75–76, 84. The arbitrator rejected Levona's argument that Eletson was not the prevailing party because relief was payable only to the Company and to the Nominees, on the theory that it had been clear "throughout the[] proceedings that Eletson would turn over any damages" to the Company and that accordingly it was "Eletson that substantially prevailed on its claims in this arbitration." *Id.* at 88. The arbitrator also rejected Levona's argument that fees should not be awarded for the bankruptcy and bondholder litigation based on JAMS Rule 29, which provides that the "Arbitrator may order appropriate sanctions for failure of a Party to comply with its obligations under any of these Rules or with an order of the Arbitrator." *Id.* at 91. "In other words, the award of attorneys' fees was as damages to compensate for the intentional violations by Levona, through its alter ego, Pach Shemen, of the Status Quo Injunction Order—not a finding of a prevailing party's entitlement to fees or a finding under a fee-shifting provision." *Id.*

PROCEDURAL HISTORY

On August 18, 2023, Petitioners filed the instant Petition, which was ordered unsealed on September 13, 2023. Dkt. Nos. 1, 11, 14. On September 22, 2023, Respondent moved to dismiss the Petition and cross-petitioned to vacate the Award. Dkt. Nos. 28–31.[11] About one

[11] On October 14, 2023, Respondent filed a statement of relatedness asking the Court to refer the Petition to the Bankruptcy Court handling the bankruptcy litigation of Holdings. Dkt. No. 32. Petitioners opposed that request. Dkt. No. 33. On October 6, 2023, Respondent filed a motion to refer the matter to the Bankruptcy Court, Dkt. No. 34, and, on October 10, 2023, Petitioners opposed that motion, Dkt. No. 35. The Court denied the motion to refer the Petition to the Bankruptcy Court on October 10, 2023. Dkt. No. 36. The Court reasoned that, as the tribunal with original jurisdiction of the Petition under the New York Convention and the Federal Arbitration Act, it was the proper entity to decide whether to confirm or vacate the Award. *Id.* Respondent asked the Court to reconsider that order, Dkt. No. 38, but the Court denied that

month later, on October 19, 2023, with leave from the Court, Petitioners filed their Supplemental Amended Petition. Dkt. Nos. 46–47. The Supplemental Amended Petition amended the Petition to reflect that the arbitrator had rendered a Final Award. *Id.* Respondent amended its response and moved to dismiss the Amended Petition on October 24. Dkt. Nos. 48–51. One week later, Petitioners filed their reply in support of the Amended Petition and further opposition to Respondent's cross-petition to vacate. Dkt. Nos. 54–55. Respondent filed its own reply in support of its motion to dismiss the Amended Petition on November 14, 2023. Dkt. Nos. 59–60.

On November 15, the Court held a conference, at which it instructed the parties to each submit statements of undisputed fact pursuant to Federal Rule of Civil Procedure 56.1. That same day, Petitioners filed a Corrected Amended and Supplemental Petition to Confirm the Arbitral Award, reflecting that Petitioners sought only confirmation and not enforcement of the Award. Dkt. No. 62. Petitioners and Respondent filed their respective statements and corresponding exhibits over the following forty-five days. Dkt. Nos. 65–68. On January 2, 2024, the Court held oral argument on the Petition.[12]

DISCUSSION

Petitioners petition for an order confirming the Award and to have judgment entered thereon pursuant to Section 207 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 207. Dkt. No. 62. Respondent moves to dismiss the petition and cross-petitions the Court to vacate the

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request, noting that confirmation was intended to be conducted on a summary and speedy basis and that it was prepared to consider the pending motions on the timetable submitted by the parties, Dkt. No. 39.

[12] The Court received supplemental letter briefs on January 5, 2024. Dkt. Nos. 73, 74. By letter motion on January 11, 2024, Respondent moved to amend its motion to vacate the Award and for discovery. Dkt. No. 75. After hearing oral argument, the Court denied that motion by memorandum and order dated January 23, 2024. Dkt. No. 80.

Award.[13] Dkt. No. 49. Petitioners brought this action under the New York Convention, more formally known as the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38. "Recognition and enforcement seek to give effect to an arbitral award, while vacatur challenges the validity of the award and seeks to have it declared null and void." *Corporación AIC, SA v. Hidroeléctrica Santa Rita S.A.*, 66 F.4th 876, 882 (11th Cir. 2023). "The party opposing enforcement of an arbitral award has the burden to prove that one of the . . . defenses under the New York Convention applies." *Encylopaedia Universalis S.A. v. Encyclopaedia Britannica, Inc.*, 403 F.3d 85, 90 (2d Cir. 2005).

There is a "strong federal policy favoring arbitration, the enforcement of arbitration agreements and the confirmation of arbitration awards." *Pike v. Freeman*, 266 F.3d 78, 89 (2d Cir. 2001). "[T]he confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court." *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984). As a summary proceeding, the decision of whether to confirm an arbitral award "is not intended to involve complex factual determinations, other than a determination of the limited statutory conditions for confirmation or grounds for refusal to

[13] The Court has jurisdiction over this matter. Although review of domestic awards requires an "independent jurisdictional basis" apart from the FAA, confirmation or vacatur of nondomestic or international awards under the New York Convention does not. *F. Hoffmann-La Roche Ltd. v. Qiagen Gaithersburg, Inc.*, 730 F. Supp. 2d 318, 324 (S.D.N.Y. 2010). The FAA expressly provides federal courts with subject matter jurisdiction over an "action or proceeding falling under the [New York] Convention." 9 U.S.C. § 203. The New York Convention applies to arbitral awards relating to commercial matters where either (1) at least one party is not a citizen of the United States; or (2) all parties are United States citizens but there is some reasonable relationship with one of more foreign states. 9 U.S.C. § 202; *see Dumitru v. Princess Cruise Lines, Ltd.*, 732 F. Supp. 2d 328, 335 (S.D.N.Y. 2010). It is not disputed here that no party is domiciled or has its principal place of business in the United States, and that the Award concerns a commercial matter.

confirm." *Zeiler v. Deitsch*, 500 F.3d 157, 169 (2d Cir. 2007). The review of arbitration awards is "very limited . . . in order to avoid undermining the twin goals of arbitration, namely, settling disputes efficiently and avoiding long and expensive litigation." *Folkways Music Publishers, Inc. v. Weiss*, 989 F.2d 108, 111 (2d Cir. 1993). Thus, although the FAA empowers a court to "confirm and/or vacate the award, either in whole or in part . . . a petition brought under the FAA is not an occasion for *de novo* review of an arbitral award," *Scandnavian Reinsurance Co. v. Saint Paul Fire & Marine Ins. Co.*, 668 F.3d 60, 71 (2d Cir. 2012), nor an occasion for the court to conduct a "reassessment of the evidentiary record," *Wallace v. Buttar*, 378 F.3d 182, 193 (2d Cir. 2004).

The FAA provides several grounds upon which a court can refuse to confirm an arbitral award. At the outset, it states that a court must confirm an arbitral award falling under the New York Convention "unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in said Convention."[14] 9 U.S.C. § 207. Article V of the New York Convention specifies seven grounds upon which courts may refuse to recognize an award. *Encyclopaedia Universalis*, 403 F.3d at 90. "[R]ecognition and enforcement of the award may be refused" only if the party against whom the award is invoked "furnishes . . . proof" that: (1) the parties to the arbitration agreement were "under some incapacity" or the agreement "is not valid" under the law designated by the parties, or, in the event they have not designated any, the law of the country where the award was made; (2) "the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;" (3) "[t]he award deals with a difference not

[14] Some courts in this District have found that, by its express terms, the New York Convention does not permit *vacatur* of arbitral award; it only permits a court to refuse to confirm. *See, e.g.*, *Kondot S.A. v. Duron LLC*, 586 F. Supp. 3d 246, 255 (S.D.N.Y. 2022).

contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration," although any "part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;" (4) "[t]he composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;" or (5) "[t]he award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made." New York Convention, art. V. Additionally, "[r]ecognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that" (6) "[t]he subject matter of the difference is not capable of settlement by arbitration under the law of that country" or (7) "[t]he recognition or enforcement of the award would be contrary to the public policy of that country." *Id.*

In addition to the bases for refusing to confirm an arbitral award provided in the New York Convention, and recognized by reference in the FAA, the FAA itself contains several further statutory bases upon which an arbitral award may be vacated. Such statutory bases are authorized by the New York Convention, which instructs "a court in the country under whose law the Arbitration was conducted to apply domestic arbitral law, in this case the FAA, to a motion to set aside or vacate that arbitral award." *Yusuf Ahmed Alghanim & Sons v. Toys "R" Us, Inc.*, 126 F.3d 15, 21 (2d Cir. 1997). Thus, where an "[a]rbitration was entered into in the United States . . . the domestic provisions of the FAA also apply, as permitted by Articles V(1)(e) and (V)(2) of the New York Convention." *Scandinavian Reinsurance Co.*, 668 F.3d at 71; *see also Zurich Am. Ins. Co. v. Team Tankers A.S.*, 811 F.3d 584, 589 (2d Cir. 2016) ("The

award in this case having been rendered in the United States, available grounds for vacatur include all the express grounds for vacating an award under the FAA."); *Temsa Ulasim Araclari Sanayi ve Ticaret A.S. v. CH Bus Sales, LLC*, 2022 WL 3974437 (S.D.N.Y. Sept. 1, 2022) (explaining that where "'the arbitration took place in the United States,' the award also is 'subject to the FAA provisions governing domestic arbitration awards.'" (quoting *Zeiler*, 500 F.3d at 164). Because the arbitration here was conducted in the United States, the Court also considers the grounds for vacatur outlined in the FAA. *See, e.g.*, *Branco Bradesco S.A. v. Steadfast Ins. Co.*, 2018 WL 4284315, at *10 (S.D.N.Y. Sept. 7, 2018).

Section 10(a) of the FAA provides four statutory bases upon which an arbitral award may be vacated:

> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; and
>
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them so that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a). Next, Section 11(b) of the FAA states that that the Court may *modify* the award under certain circumstances, including when "the arbitrators have awarded upon a matter not submitted to them." *Id.* § 11(b); *see also Nat'l Indem. Co. v. IRB Brasil Resseguros S.A.*, 164 F. Supp. 3d 457, 474 (S.D.N.Y. 2016). Still, courts have cabined the applicability of the FAA's statutory bases for vacating, modifying, or correcting an award: "[t]he statutory provisions [of the FAA], 9 U.S.C. §§ 10, 11, in expressly stating certain grounds for either vacating an award or modifying or correcting it, do not authorize its setting aside on the grounds of erroneous finding

of fact or of misinterpretation of law." *Amaicizia Societa Navegazione v. Chilean Nitrate & Iodine Sales Corp.*, 274 F.2d 805, 808 (2d Cir. 1960); *see also Squarepoint Ops LLC v. Sesum*, 2020 WL 996760, at *3 (S.D.N.Y. Mar. 2, 2020) ("Even a 'serious error' in the law or facts is alone insufficient to warrant vacatur." (quoting *KT Corp. v. ABS Holdings, Ltd.*, 784 F. App'x 21, 24 (2d Cir. 2019) (summary order))).

Finally, and in addition to the bases specified in the New York Convention and the FAA, the Second Circuit "has 'held that the court may set aside an arbitration award if it was rendered in manifest disregard of the law.'"[15] *Zurich Am. Ins. Co.*, 811 F.3d at 589 (quoting *Schwartz v. Merrill Lynch & Co.*, 665 F.3d 444, 451 (2d Cir. 2011)). Under these standards, "vacatur of arbitral awards is extremely rare." *Salus Cap. Partners, LLC v. Moser*, 289 F. Supp. 3d 468, 476 (S.D.N.Y. 2018) (quoting *Hamerslough v. Hipple*, 2012 WL 5290318, at *3 (S.D.N.Y. Oct. 25, 2012)).

Respondent argues that (1) the Petition should be dismissed at least in part because the Award was not in favor of Petitioners and Petitioners therefore lack standing, Dkt. No. 50 at 14–16; (2) the arbitrator exceeded his powers, *id.* at 16–31; and (3) the arbitrator manifestly disregarded the law, *id.* at 32–35. There is no argument that the award was procured by corruption, fraud, or undue means, that there was evident partiality or corruption in the arbitrator, or that the arbitrator was guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy.

The Court takes each argument in turn.

[15] The Second Circuit has expressly rejected the more permissive approach by other Circuits to vacatur of arbitral awards on other non-statutory bases, such as when the awards are "completely irrational," "arbitrary and capricious," or "contrary to an explicit public policy." *Porzig v. Dresdner, Kleinwort, Benson, N. Am. LLC*, 497 F.3d 133, 139 (2d Cir. 2007).

I. Petitioners Have Standing

"Article III of the Constitution limits federal courts to deciding 'Cases' and 'Controversies.' For a legal dispute to qualify as a genuine case or controversy, at least one plaintiff must have standing to sue." *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019); *see also Frank v. Gaos*, 139 S. Ct. 1041, 1046 (2019). "To have standing, a plaintiff must 'present an injury that is concrete, particularized and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). "If a plaintiff fails to satisfy any of those elements, a federal court lacks subject-matter jurisdiction to hear the case and it must be dismissed." *Fishon v. Peloton Interactive, Inc.*, 620 F. Supp. 3d 80, 89 (S.D.N.Y. 2022) (quoting *Ross v. AXA Equitable Life Ins. Co.*, 115 F. Supp. 3d 424, 432 (S.D.N.Y. 2015)). "Article III's case-or-controversy requirement applies to actions governed by the FAA." *Stafford v. Int'l Bus. Machines Corp.*, 78 F.4th 62, 68 (2d Cir. 2023); *Badgerow v. Walters*, 142 S. Ct. 1310, 1316 (2022).

Respondent argues that Petitioners lack Article III standing—specifically, injury in fact—to confirm the Award because the arbitrator did not award Petitioners any financial relief. Dkt. No. 50 at 14–16; Dkt. No. 59 at 2-6. Respondent notes that the compensatory damages awarded by the arbitrator are to be paid to persons other than Petitioners, including the Company, the Nominees, and those who advanced the fees and costs expended in the arbitration. Dkt. No. 59 at 4. Respondent also argues that the Award's declaratory relief was purely backward-looking. *Id.* Finally, Respondent argues that its vacatur petition cannot give Petitioners standing to confirm the award because standing addresses whether a party may bring suit in the first place. *Id.* at 5. Respondent bases its argument in large part on language from the Supreme Court's decision in *Town of Chester v. Laroe Estates*, 581 U.S. 433 (2017), that "a plaintiff must

demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Id.* at 439 (quoting *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008)). Relying on the second clause of that sentence, Respondent asserts that the Court must examine each item of relief awarded by the arbitrator to determine whether it provides a financial or other benefit to Respondents and, if it does not, then the Court must refuse to confirm the arbitral award or at least those portions of it that do not benefit Respondents.

Respondent's argument is built on a faulty foundation. Respondent reasons from *Town of Chester* that because portions of the award do not provide financial relief directly to Petitioners, Petitioners do not have a concrete interest in enforcement of those portions and the remedy awarded by the arbitrator will not redress their grievances. Respondent's premise is mistaken. A party to a contract need not have suffered direct financial loss to have a stake in its enforcement or to have suffered a concrete injury when it is breached. "Intangible harms," in addition to physical or monetary injuries, "can also be concrete." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021). "Chief among them are injuries with a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts." *Id.* Rights arising from the law of contracts are no less legal rights than those arising from the laws of property and tort. *See Tenn. Elec. Power Co. v. Tenn. Valley Auth.*, 306 U.S. 118, 137 (1939). A contract right itself is a protectible interest, the breach of which gives rise to a concrete injury. *See Spokeo*, 578 U.S. at 344 (Thomas, J., concurring) (private rights that confer Article III standing include contract rights); *Tech-Sonic, Inc. v. Sonics & Materials, Inc.*, 2015 WL 4715329, at *6 (D. Conn. Aug. 7, 2015).

A division has emerged among sister circuits regarding whether a breach of contract itself constitutes a legally cognizable injury in fact, and thus satisfies the first element of the *Lujan* test

for standing. *See, e.g., Dinerstein v. Google, LLC*, 73 F.4th 502, 522 (7th Cir. 2023) ("A breach of contract alone—without any actual harm—is purely an injury in law, not an injury in fact. And it therefore falls short of the Article III requirements for a suit in federal court."); *Denning v. Bond Pharmacy, Inc.*, 50 F.4th 445, 451 (5th Cir. 2022) ("[A] breach of contract is a sufficient injury for standing purposes.").

In the Court's view, the Fifth Circuit has the better of the arguments. The Seventh Circuit based its view that an alleged breach of contract did not create a cognizable injury giving rise to standing in federal court on its reading of *Spokeo, Inc. v. Robins*, 578 U.S. 330, *TransUnion LLV v. Ramirez*, 594 U.S. 413, and on a law review article. *Dinerstein*, 73 F.4th at 519. In *Spokeo*, the Supreme Court held that a plaintiff asserting a "bare procedural violation" of the Fair Credit Reporting Act ("FCRA"), "divorced from any concrete harm," did not have standing to sue in federal court. 578 U.S. at 341. Congress did not have the power to "authorize that person to sue to vindicate that right." *Id.* In *TransUnion*, the Supreme Court held that the courts lacked the power under Article III of the Constitution to adjudicate claims that a credit reporting agency violated the FCRA by failing to use reasonable procedures to ensure the accuracy of credit files in the absence of evidence that the misleading credit files were provide to any potential creditors, concluding that the misleading information in the internal credit files did not itself constitute a concrete harm. 594 U.S. at 433, 435. The Seventh Circuit, citing *Spokeo* and *TransUnion*, reasoned that breach of a contract created a mere "legal infraction" and was insufficient to create standing in the absence of some additional "factual harm suffered" to the

plaintiff as a result of the breach. *Dinerstein*, 73 F.4th at 519 (quoting F. Andrew Hessick, *Standing and Contracts*, 89 Geo. Wash. L. Rev. 298, 313 (2021)).[16]

The holdings of *Spokeo* and *TransUnion* do not compel that result, and the decisions of the Second Circuit do not support it. Both *Spokeo* and *TransUnion* involved alleged statutory violations. At bottom, the question before the Court was whether Congress could expand the power of the federal courts under Article III by "elevat[ing] to the status of legally cognizable injuries, *de facto* injuries that were previously inadequate in law." *Spokeo*, 578 U.S. at 341 (quoting *Lujan*, 504 U.S. at 578); *see TransUnion*, 594 U.S. at 425. Those cases did not involve, as here, pre-existing common law rights historically enforceable in both federal and state court. *See, e.g.*, *Ogden v. Saunders*, 25 U.S. 213, 259 (1827). The *TransUnion* Court held that Congress "may not simply enact an injury into existence, using its lawmaking power to transform something that is not remotely harmful into something that is." 594 U.S. at 426 (quoting *Hagy v. Demers & Adams*, 882 F.3d 616, 622 (6th Cir. 2018)).

The Court's methodology in *Spokeo* and *TransUnion* support the existence of Article III standing here. The Supreme Court instructed courts to look to "constitutional text, history, and precedent" to mark the limits of Congress's power to create an actionable legal injury sufficient to support Article III standing. *Id.* at 428; *see also id.* at 424 ("[H]istory and tradition offer a meaningful guide to the types of cases that Article III empowers federal courts to consider." (quoting *Sprint Commc'ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 274 (2008))); *Spokeo*, 578

[16] Ironically, the Hessick article cited in *Dinerstein* recognizes that applying *Spokeo* to require a showing of some additional concrete harm to the plaintiff before a breach of contract claim could be brought in federal court "would significantly affect the enforceability of contracts in federal courts" and would have "undesirable consequences," but argues that "the inability to square *Spokeo* with contracts provides a compelling argument that *Spokeo* was wrongly decided." F. Andrew Hessick, *Standing and Contracts*, 89 Geo. Wash. L. Rev. 298, 300–02 (2021). The more logical and compelling inference is that *Spokeo* does not apply to contract claims.

U.S. at 340–41 (standing inquiry derives from case-or-controversy requirement which "is grounded in historical practice"). The Supreme Court did not hold that the plaintiff was required to show financial or physical injury to have Article III standing. Rather, it specifically embraced that "[v]arious intangible harms . . . can also be concrete." *TransUnion*, 594 U.S. at 425; *id.* at 427 (asking whether the plaintiff has alleged "any physical, monetary, or cognizable intangible harm,"); *Spokeo*, 578 U.S. at 340 ("[W]e have confirmed in many of our previous cases that intangible injuries can nevertheless be concrete"). The Court also did not hold that the plaintiff personally need have suffered some additional factual harm in order to have standing. The *Spokeo* Court stated that in some circumstances, those similar to instances at common law, the violation of a legal right can give rise to standing without any showing of additional harm. 578 U.S. at 342; *see also* Erwin Chemerinsky, *Federal Jurisdiction* 74 (8th ed. 2020) ("Injury to rights recognized at common law—property, contracts, and torts, are sufficient for standing purposes."). The *TransUnion* Court then relied upon and cited favorably to *Sprint Communications*, in which (as discussed further *infra*) the Court recognized that a person did not have had to suffer harm individually in order to have standing to bring suit for harm caused to another. *Sprint Commc'ns Co.*, 554 U.S. at 287–88.

Eletson's standing here fits comfortably within constitutional text, history, and precedent. Eletson's injury is breach of a contractual right for Levona to honor the arbitral award. History and precedent support that a person whose contractual rights have been violated has standing to sue the breaching party, regardless of whether the non-breaching party has suffered additional harm. The right of a party to sue for breach of contract, regardless of harm done, has deep and roots in the law. *See* Restatement (First) of Contracts § 328 & cmt. a (1932) ("A breach of contract always creates a right of action; but a breach sometimes occurs without causing any

harm."); Lon L. Fuller & William R. Perdue, *The Reliance Interest in Contract Damages: 1*, 46 Yale L.J. 52, 59 (1936) ("In a society in which credit has become a significant and pervasive institution, it is inevitable that the expectancy created by an enforceable promise should be regarded as a kind of property, and breach of the promise as an injury to that property . . . . That the promisee had not "used" the property which the promise represents (had not relied on the promise) is as immaterial as the question whether the plaintiff in trespass *quare clausum fregit* was using his property at the time it was encroached upon."). For two centuries, courts have recognized that a party who suffers only nominal damages from a material breach may still seek relief in court against the breaching party. *See Marzetti v. Williams*, 109 Eng. Rep. 842, 846 (K.B. 1830) ("[W]herever there is a breach of contract, or any injury to the right arising out of that contract, nominal damages are recoverable."); *Wilcox v. Executors of Plummer*, 4 Pet. 172, 181–182 (1830) (holding that breach of "a contract to act diligently and skil[l]fully" provides a "ground[] of action" in federal court); *see also Luitpold Pharm., Inc. v. Ed. Geistlich Söhne A.G. Für Chemische Industrie*, 784 F.3d 78, 87 (2d Cir. 2015) (reversing district court's grant of dismissal of breach of contract claim for failure to adequately plead damages because plaintiff "would have plausible claims for nominal damages"). Courts also have long recognized that a promisee has the same right to enforce a contractual provision benefitting a third-party beneficiary as a contractual provision benefitting the promissee itself. *See* Restatement (First) of Contracts § 345 & cmt. a (1932) ("This Section is an application of the general rules of damages to contracts for the breach of which a beneficiary as well as the promisee can maintain suit."); Restatement (Second) of Contracts § 305 (1981) ("The promisee of a promise for the benefit of a beneficiary has the same right to performance as any other promise, whether the promise is binding because part of a bargain, because of his reliance, or because of its formal

characteristics."); *see also* Restatement (Second) of Contracts § 305 ("A promise in a contract creates a duty in the promisor to the promise to perform the promise even though he also has a similar duty to an intended beneficiary."); 9 Corbin on Contracts § 46.2 (2023) ("Currently, there is no longer any doubt that a promisee has the same right to performance in a contract for the benefit of a third party as any other contract promise."). It is sufficient that a plaintiff be "'in privity of contract with the defendant *or* is a third party beneficiary of the contract.'" *Tang Cap. Partners, LP. v. BRC Inc.*, 2023 WL 2396635, at *16–17 (S.D.N.Y. Mar. 8, 2023) (quoting *Hillside Metro Assocs., LLC v. JPMorgan Chase Bank, N.A.*, 747 F.3d 44, 49 (2d Cir. 2014))).

The Court in *Spokeo* recognized that a plaintiff would have standing to bring a claim for slander *per se*, notwithstanding that damages might be difficult to prove, 578 U.S. at 341–42, and the Court in *TransUnion* recognized that harms such as "reputational harms, disclosure of private information, and intrusion upon seclusion" could give rise to Article III standing, 594 U.S. at 425. The tort of invasion of privacy, however, was recognized only late in our constitutional history. *See* Restatement (Second) of Torts § 652A & cmt. a ("Prior to 1890 no English or American court had ever expressly recognized the existence of the right [to privacy] . . . ."). There is no reason to believe that the common law claim of breach of contract, which is of at least equal if not greater historical provenance, should be accorded lesser recognition.

The recognition of standing is also supported by constitutional text. While Respondent's challenge to Petitioners' standing arises in the immediate and specific context of a motion to confirm an arbitral award, Respondent's argument cannot be so limited. If accepted, it would deny any party to a contract the right to seek relief in federal court for a material breach in the absence of a showing of some additional harm to itself. But claims for breach of contract arise routinely in both state and federal court, and—not infrequently in those actions—the non-

breaching party has not suffered additional harm separate from the breach itself. It occasionally will bargain for and seek to enforce benefits that will accrue to a third party. The Constitution itself recognizes that when such suits arise between citizens of different States the federal courts are not deprived of power to hear them. Article III of the Constitution provides that the judicial power of the United States extends "to Controversies between two or more States." U.S. Const. Art. III sec. 2, cl. 1. Indeed, the provenance of diversity jurisdiction dates back to the very first Congress. Judiciary Act of 1789, 1 Stat. 73. If the non-breaching party has a claim against the party in breach, the non-breaching party has the right to have that case adjudicated in federal court (assuming that the statutory prerequisites for diversity jurisdiction are satisfied). And if the breaching party is sued in the courts of a foreign state by a citizen of that state, it has the right to remove the matter to federal court (again, assuming the statutory prerequisites are satisfied). In that manner, the Constitution itself guarantees all citizens a fair and impartial tribunal for the adjudication of disputes. *See, e.g.*, *Bank of United States v. Deveaux*, 5 Cranch 61, 87 (1809) (Marshall, C.J.) ("The judicial department was introduced into the American constitution under impressions, and with views, which are too apparent not to be perceived by all. However, true the fact may be, that the tribunals of the states will administer justice as impartially as those of the nation, to parties of every description, it is not less true that the constitution itself either entertains apprehensions on this subject, or views with such indulgence the possible fears and apprehensions of suitors, that it has established national tribunals for the decision of controversies between aliens and a citizen, or between citizens of different states."), *overruled on other grounds by Louisville, C. & C.R. Co. v. Letson*, 43 U.S. 497 (1844); The Federalist No. 80 (Alexander Hamilton) (stating that suits between citizens of different states "should be committed to that tribunal which, having no local attachments, will be likely to be impartial

between the different States and their citizens, and which, owing its official existence to the Union, will never be likely to feel any bias inauspicious to the principles on which it is founded"). But the Seventh Circuit's view would have the effect of stripping the federal courts of power to hear certain of those cases in which, at the founding, the Framers and the First Congress thought the exercise of federal court power would be most important—where the presumed parochialism and prejudices of state courts would not give a foreigner a fair and independent tribunal. *See Erie R. Co. v. Tompkins*, 304 U.S. 64, 74 (1938) ("Diversity of citizenship jurisdiction was conferred in order to prevent apprehended discrimination in state courts against those not citizens of the state."). Under its view, an out-of-state plaintiff who contracted for a benefit to be provided to a third party and whose right to that performance was breached would be relegated in a suit for performance to the courts of the breaching party, except if the plaintiff could show some additional harm to itself. The court would have the general language of "case" or "controversy" negate the more specific language creating diversity jurisdiction in a vast swath of cases.

Finally, the Fifth Circuit's approach is closer to the Second Circuit's reading of *TransUnion*. In the aftermath of *TransUnion*, the Second Circuit has held that a person who was neither a party to a contract nor its third-party beneficiary but was a mere non-party lacked standing to enforce an agreement. *Ryansko v. N.Y. Univ.*, 63 F.4th 186, 193–94 (2d Cir. 2023). Implicit in *Rynasko* was the notion that if the plaintiff—the parent—was a party to the contract, she would have had standing. The Second Circuit has also held a property-based injury, even one rooted in federal statute, is sufficient to give rise to standing in the absence of any other additional harm. *Saba Cap. Cef Opportunities 1, Ltd. v. Nuveen Floating Rate Income Fund*, 88 F.4th 103, 114 (2d Cir. 2023). If one's right to dominion and control over chattels is seriously

interfered with, she has standing to sue. *Id.* The Second Circuit has held, post-*TransUnion*, that a plaintiff whose private information has been disclosed to third parties has standing to sue regardless of whether the third parties used that information to cause additional harm. *Bohnak v. Marsh & McLennan Cos., Inc.*, 79 F.4th 276, 285–86 (2d Cir. 2023). Indeed, the Second Circuit has never suggested that *TransUnion* or *Spokeo* denied a person who had standing to bring a common law contract, tort, or property claim in state court lacked the standing to bring the same claim in federal court.

The conclusion that Petitioners have standing to seek confirmation of the Award readily follows. Petitioners and Respondent are all parties to the LLCA. Dkt. No. 67-2 at 1–2; Dkt No. 67-4 at 2; *cf. Ryansko*, 63 F.4th at 193 (holding that a party lacked standing to bring breach of contract claim because she was "neither a party to the contract . . . nor an intended third-party beneficiary of that agreement, nor an assignee of [a party to the contract]'s claims"). The LLCA contains a mandatory arbitration provision, which states that "[a]ny dispute, claim, or controversy arising out of or relating to this Agreement . . . shall be determined by arbitration in New York County in the State of New York or any other mutually agreeable location, before a single arbitrator." Dkt. No. 67-2 at 69. It also designated arbitration as the "exclusive and *binding* method" of resolving such disputes. *Id.* (emphasis added). It was pursuant to that provision of the LLCA that Holdings and Corp commenced an arbitration proceeding against Respondent in July 2022. Dkt. No. 65 ¶ 40; Dkt. No. 66 ¶ 40. Holdings and Corp bargained and gave consideration for the contractual right for all disputes regarding LLCA to be resolved through arbitration. Respondent agreed to be bound to that method of resolution. Yet, Respondent has not satisfied the award. It has denied that the arbitrator has the power to resolve its dispute with Petitioners and has refused to honor the arbitrator's determination of that dispute.

"An unconfirmed award is a contract right that may be used as the basis for a cause of action[,]" *Florasynth, Inc.*, 750 F.2d at 176, and contract rights are a type of private right recognized as conferring Article III standing. *See Spokeo*, 578 U.S. at 344 (Thomas, J., concurring); *see also Culwick v. Wood*, 384 F. Supp. 3d 328, 339 (E.D.N.Y. 2019). Holdings and Corp have suffered a concrete injury in the breach of their right to have the dispute determined by the arbitrator and have standing to vindicate their contractual right, even if the benefit of the award were to flow entirely to a third-party. *See United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union v. Cookson Am., Inc.*, 710 F.3d 470, 475 (2d Cir. 2013) (per curiam) (concluding that a union had Article III standing to enforce an agreement with an employer to provide benefits to retirees, because "[t]hat this benefit accrues to third parties . . . does not change the fact that the [plaintiff] has negotiated for the benefit and has incurred obligations in order to secure it"); *see also Frontier Commc'ns of N.Y., Inc. v. Int'l Bhd. of Elec. Workers*, 2008 WL 1991096, at *3 (S.D.N.Y. May 6, 2008) (Lynch, J.) ("It is 'axiomatic' that a party to an agreement has standing to sue a counter-party who breaches that agreement, even where some or all of the benefits of that contract accrue to a third party.").

It also is not fatal to the "redressability" element of the standing inquiry that the financial relief to be awarded by a court will be payable to a third-party and not to the plaintiff directly. "[F]ederal courts routinely entertain suits which will result in relief for parties that are not themselves directly bringing suit. Trustees bring suits to benefit their trusts; guardians ad litem bring suits to benefit their warder; receivers bring suit to benefit their receiverships' assignees in bankruptcy bring suit to benefit bankrupt estates; executors bring suits to benefit testator estates; and so forth." *Sprint Commc'ns Co.*, 554 U.S. at 287–88; *see also Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000) (holding that plaintiff had Article III

standing to assert claim for civil penalty to be paid to the Government). "[C]onfirmation arms the winning party of an arbitration 'with a court order . . . [and] a variety of remedies available to enforce the judgment.'" *Teamsters Loc. 177 v. United Parcel Serv.*, 966 F.3d 245, 253 (3d Cir. 2020) (quoting *Florasynth*, 750 F.2d at 176). If the behavior of the defendant giving rise to a concrete injury is the failure to provide a benefit to a third-party as promised, then an order requiring the provision of that benefit will redress the injury no less than the penalty paid to the federal government redressed the injury of the private plaintiff in *Laidlaw*.

Thus, even though it is true that an arbitration award is divisible for purposes of confirmation, *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 104 (2d Cir. 2006) (court "can confirm . . . the award either in whole or in part" in FAA case), the Court need not parse through the arbitral award and determine whether Petitioners have standing to seek the Court's confirmation of each element of the award. Instead, as long as the award remains unsatisfied in any respect, Petitioners—as parties to the LLCA and parties to the arbitration—have standing to seek redress. "A party, successful in arbitration, seeks confirmation by a court generally because he fears the losing party will not abide by the award. Armed with a court order the winning party has a variety of remedies available to enforce the judgment." *Florasynth*, *Inc.*, 750 F.2d at 176. Petitioners bargained for, and gave consideration pursuant to, a contract—the LLCA—that bound Petitioners and Respondent to resolve disputes relating to the contract through arbitration. Respondent has failed to satisfy that award. Confirmation of the award would reduce the arbitrator's contractually-enforceable order into a judicially-enforceable judgment, thus providing redress for Petitioners' grievance that the award has not been satisfied. *Cf. Stafford*, 78 F.4th at 67 ("Confirmation is a 'mechanism[] for enforcing arbitration awards.'" (quoting *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 582 (2008))); *D.H. Blair & Co.*, 462 F.3d at

104 ("The request [to confirm an arbitral award] simply [seeks] to give effect to the arbitration award."); *Footchrome, Inc. v. Copal Co., Ltd.*, 517 F.2d 512, 516 (2d Cir. 1975) ("The award itself is inchoate until enforced by judgment."). Respondent has not demonstrated that anything more is necessary.

The few cases upon which Respondent relies are not to the contrary. *Town of Chester* does not require a plaintiff—in order to have Article III standing—to show that the requested relief will benefit himself or herself financially. The plaintiff need only show for each claim asserted and for each form of relief claimed, a concrete and particularized injury traceable to the defendant that can be redressed through judicial relief requested. The plaintiff who has suffered damages in the past does not thereby have standing to assert a claim for injunctive relief, preventing the defendant from engaging in misconduct in the future; he also needs to allege a real and immediate risk of future injury. *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 (1983); *accord Soule v. Conn. Ass'n of Sch., Inc.*, 90 F.4th 34, 47 (2d Cir. 2023) (en banc) (separately analyzing whether plaintiffs' injury was redressable "by monetary damages and by the specific injunctive relief sought"). Likewise, a plaintiff who has standing to complain about a municipal property tax exemption does not thereby have standing to challenge a state franchise tax credit. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). It does not follow from *Town of Chester* that a person who has suffered a concrete non-speculative harm is denied a federal forum simply because the relief that will redress that harm will also accrue to the benefit of a third party.

In *Stafford v. IBM*, 78 F.4th 62, the Second Circuit held that a motion to seek confirmation of an arbitral award was moot and thus the courts did not have Article III standing

to hear it.[17] The court did not review the underlying relief awarded by the arbitrator or base its decision on any issue regarding the persons whom that relief benefitted. Rather, the court concluded that the case was moot because respondent had satisfied its obligations under an arbitration award "in full"; regardless of whom the award benefitted, there was nothing a judgment could remedy. The respondent did not owe the petitioner any further relief. *Id.* at 65, 68. There was "no longer any issue over payment or ongoing compliance with a prospective award." *Id.* at 68. The petitioner's alleged injury had been fully redressed, and its contractual right to resolution by arbitration had been fully vindicated. In this case, by contrast, Petitioners do not base standing solely on the "statutory right to seek confirmation under the FAA." *Id.* at 69. Respondent breached its contract with Petitioners and have yet to remedy that breach.[18] The Award provides relief intended to redress that breach. The dispute is not moot. A judgment is necessary for Petitioners to obtain the relief that the arbitrator determined would redress the contract rights of Petitioners that the arbitrator determined were violated.

Put differently, *Stafford* does not hold that a party to arbitration must have something financial to gain from enforcement of the award, in order to have Article III standing to seek its confirmation. Further support for this conclusion can be found in the *Stafford* court's favorable

[17] The Court notes that other Circuits would hold that, even if an arbitral award is fully satisfied, that a party could still have standing to apply for the award's confirmation. *See Teamsters Loc. 177*, 966 F.3d at 251–52 (holding that "[u]nder the FAA a party's injuries are only fully remedied by the entry of a confirmation order," and that "the dispute the parties went to arbitration to resolve is 'live' until the arbitration award is confirmed and the parties have an enforceable judgment in hand").

[18] Although the Court is dubious of the proposition that a pledge to comply with an arbitration award would defeat standing, it need not address that issue except to note that such a proposition, if accepted, could undermine the right conferred by the FAA and the New York Convention to confirmation of an award. *See Teamsters Loc. 177*, 966 F.3d at 253 & n.3. A respondent seeking to avoid payment under the award could simply pledge that it would satisfy the award, only to renege after the time period for confirmation had run.

mention of a Seventh Circuit case, *Unite Here Local 1 v. Hyatt Corp.*, in which that court found the petitioner had Article III standing to confirm an arbitral award. 862 F.3d 588 (7th Cir. 2017). In that case, the petitioner sought confirmation of two arbitral awards, one of which granted relief only in the form of an order for respondent to cease and desist certain conduct prohibited by the collective bargaining agreement between the parties, and the other of which granted monetary relief in the form of backpay, along with an order for respondent to cease and desist conduct prohibited by the collective bargaining agreement. *Id.* at 590–94. The court then found that there was "plainly a live dispute about whether [the respondent was] in fact acting in compliance with the awards," because "41 pending alleged violations of the award" created "an ongoing controversy." *Id.* at 598–99. Summarizing that and other cases, the *Stafford* court stated that a petitioner lacked standing to confirm an arbitral award "when there is no longer any issue over payment or ongoing compliance with a prospective award." 78 F.4th at 68. Finally, the court concluded its standing analysis by stating that "[t]he FAA's process for confirming an arbitration award still requires Article III injury, and § 9 of the FAA does not itself confer standing." *Id.* at 69.

Compagnie Noga d'Importation et d'Exportation S.A. v. Russian Fed'n, is also far afield. 2008 WL 3833257, at *6 (S.D.N.Y. Aug. 15, 2008), *aff'd*, 350 F. App'x 476 (2d Cir. 2009) (summary order). In that case, the court held that a party to an arbitration who had assigned its claim and the proceeds of an arbitration award to a syndicate of banks lacked standing to bring suit on that claim and to enforce the arbitral award. But Respondent's reliance on *Compagnie Noga* confuses an assignee with a third-party beneficiary. "An unequivocal and complete assignment extinguishes the assignor's rights against the obligor and leaves the assignor without standing to sue the obligor." *Aaron Ferer & Sons Ltd. v. Chase Manhattan Bank*, 731 F.2d 112,

125 (2d Cir. 1984); *see Valdin Invs. Corp. v. Oxbridge Cap. Mgmt., LLC*, 651 Fed. App'x 5, 7 (2d Cir. 2016) (summary order) ("Valdin's assignment of its rights extinguished its claims against Oxbridge and deprived it of any interest in this litigation. Valdin therefore lacks standing."); *Wistron Neweb Corp. v. Genesis Networks Telecom Servs., LLC*, 2023 WL 4493542, at *1 (S.D.N.Y. July 12, 2023) (same); *Sonterra Cap. Master Fund, Ltd. v. Barclays Bank PLC*, 403 F. Supp. 3d 257, 260 (S.D.N.Y. 2019) ("Where a valid assignment has been executed, the assignee is 'the real party in interest' and 'the right to sue is exclusively' the assignee's." (quoting *Dennis v. JPMorgan Chase & Co.*, 342 F. Supp. 3d 404, 409 n.6 (S.D.N.Y. 2018))). By contrast, both the parties to the contract and an intended third-party beneficiary have standing to enforce a contract. *Wistron Neweb Corp.*, 2023 WL 4493542, at *1. The petitioner in *Compagnie Noga* had assigned its interest in the claim in that case. 2008 WL 3833257, at *5. Accordingly, the holding in *Compagnie Noga* that the petitioner no longer had standing was and remains unexceptional. Acceptance of Respondent's argument here, on the other hand, would be unprecedented.

II. Respondent's Arguments that the Arbitrator Exceeded His Powers

Respondent next argues that the arbitrator exceeded his powers in violation of Section 10(a)(4) of the FAA by (1) adjudicating claims for conduct that falls outside the scope of the arbitration agreement in the LLCA and that is expressly subject to a London-seated arbitral tribunal; (2) adjudicating the rights and duties of non-parties to the arbitration proceedings and non-signatories to the LLCA; (3) adjudicating claims barred by the bankruptcy; (4) awarding fees incurred in the bankruptcy case and the bondholder litigation, in a manner that both violates the bankruptcy court's exclusive jurisdiction and is outside the scope of the LLCA's arbitration clause; and (5) awarding fees and costs to non-prevailing parties.

The FAA permits vacatur of an arbitral judgment "where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a)(4). The Second Circuit has "consistently accorded the narrowest of readings to section 10(a)(4) permitting vacatur where the arbitrator has exceeded [his] powers." *Jock v. Sterling Jewelers Inc.*, 942 F.3d 617, 622 (2d Cir. 2019) (quoting *ReliaStar Life Ins. Co. of N.Y. v. EMC Nat'l Life Co.*,564 F.3d 81, 85 (2d Cir. 2009)). The focus of the inquiry is "whether the arbitrator had the power, based on the parties' submissions or the arbitration agreement, to reach a certain issue, not whether the arbitrator correctly decided that issue." *Id.* (alterations omitted) (quoting *Jock v. Sterling Jewelers Inc.*, 646 F.3d 113, 122 (2d Cir. 2011)); *see also Subway Int'l, B.V. v. Subway Russia Franchising Co., LLC*, 2021 WL 5830651, at *4 (S.D.N.Y. Dec. 8, 2021); *LTF Constr. Co., LLC v. Cento Sols. Inc.*, 2020 WL 7211236, at *3 (S.D.N.Y. Dec. 7, 2020). "[A]n arbitrator may exceed her authority by, first considering issues beyond those the parties have submitted for her consideration, or second, reaching issues clearly prohibited by law or by the terms of the parties' agreement." *Jock*, 942 F.3d at 622. "This is an extremely deferential standard of review." *Id.* "It is only when an arbitrator strays from interpretation and application of the agreement and effectively dispenses his own brand of industrial justice that his decision may be unenforceable." *Stolt-Nielson S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671 (2010).

A. Adjudication of Claims Subject to a Different Arbitration Agreement

Respondent argues that the arbitrator exceeded his powers under the arbitration clause of the LLCA by improperly adjudicating claims stemming from an alleged breach of the BOL. Dkt. No. 50 at 23–25. In particular, Respondent asserts that the dispute about whether the Company exercised the Purchase Option should have been arbitrated in London before the London Court of International Arbitration ("LCIA") under English law pursuant to the terms of

the BOL, and not in New York pursuant to the terms of the LLCA. *Id.* at 25. Respondent points to portions of the Award in which the arbitrator "concluded that because 'the conditions for the buyout were met . . . pursuant to the BOL, Levona's interests should have been transferred to Eletson Gas, or its nominee[,]" *id.* at 24 (quoting Dkt. No. 67-58 at 47), to posit that the arbitrator acted outside his scope of "authority to decide only those issues 'arising out of or relating to' the LLCA[,]" *id.* (quoting Dkt. No. 67-2 § 12.14). Respondent argues that the arbitrator therefore improperly awarded unjust enrichment damages for events "not governed by the arbitration agreement." *Id.* at 24 (internal citation omitted).

Respondent's arguments mirror those that it made to the arbitrator. *See* Dkt. No. 31-8. Before the arbitrator, Respondent argued that, in the words of the arbitrator, "whether the Option was exercised, or whether performance under the Option or Loan was completed, must be decided by the LCIA, not JAMS." *Id.* at 5. It further asserted, again in the words of the arbitrator, that "the issue of who controls the preferred units is outside of JAMS' jurisdiction because it requires the arbitrator to interpret and enforce the Transaction Documents, which, according to Respondent, provide for arbitration in the London Court of International Arbitration." *Id.*

The arbitrator twice rejected those arguments. In his ruling on the motion to strike, the arbitrator first concluded that, by filing counterclaims, Respondent had availed itself of the arbitral forum, submitted to JAMS, and waived any objection to the arbitrator's assertion of jurisdiction. *Id.* at 12. In the alternative, and independently, the arbitrator rejected Respondent's argument on the merits because the language of the arbitration provision in the LLCA was broad, and "[t]o the extent that the Transaction Documents or events or actions that occurred in connection with those transactions 'relat[e] to [the LLC Agreement] or the breach, termination,

enforcement, interpretation or validity thereof' the broad arbitration provision of the LLC Agreement governs." *Id.* at 13 (quoting Dkt. No. 67-2 § 12.14(a)) (alterations in original). The arbitrator rejected Respondent's proposed construction of the two arbitration provisions which would "require that the parties arbitrate their disputes in two steps: first, go to London to adjudicate performance under the Transaction Documents and then second, come to JAMS to determine breaches under the [LLCA]." *Id.* at 14. According to the arbitrator, such an interpretation "would render impossible the intent of the arbitration provision in the [LLCA], which contemplates that the parties use best efforts to arbitrate to completion disputes within 150 days from the selection of the arbitrator." *Id.* In the Award, the arbitrator reiterated that Levona itself had sought relief for counterclaims that the arbitrator could only award if he interpreted, enforced and provided relief pursuant to the Transaction Documents, and had thereby waived any jurisdictional objections concerning the claims and counterclaims. Dkt. No. 67-58 at 13.

At the outset, the parties dispute whether Respondent waived its objection to the arbitrator's jurisdiction to determine if the Purchase Option was exercised. It is for the Court to determine whether Respondent waived its objection. *Cf. Opals on Ice Lingerie v. Bodylines, Inc.*, 320 F.3d 362, 368 (2d Cir. 2003) ("[I]n this case, Bodylines objected repeatedly to arbitration, beginning with the statement by its counsel in June 1999 which inspired Opals to file the instant litigation. Correspondence between the parties throughout the period of the dispute further supports Bodylines' assertion that it continuously objected to arbitration. These objections prevent a finding of waiver."). Further, the question of whether a party has waived its right to object to the arbitrability of an issue is governed by federal law. *See, e.g., Woodcrest Nursing Home v. Loc. 144, Hotel, Hospital, Nursing Home and Allied Services Union*, 788 F.2d 894, 899 (2d Cir.1986) (per curiam). Even where a party participates in arbitral proceedings, it is

not deemed to have waived its objection to arbitrability of an issue if it "consistently and vigorously maintained its objection to the scope of arbitration." *Coady v. Ashcraft & Gerel*, 223 F.3d 1, 9 n.10 (1st Cir. 2000). "[T]he fact that a party 'forcefully object[s]' to having an arbitrator decide a dispute . . . suggests an unwillingness to submit to arbitration." *Opals*, 320 F. 3d at 369 (quoting *First Options of Chi. v. Kaplan*, 514 U.S. 938, 946 (1995) (alteration added)). Here, Respondent did not waive its objection. The first argument presented by Respondent in its response to the Petitioners' statement of claims was that the arbitrator lacked jurisdiction to determine whether the Purchase Option was exercised, stating: "the question of this matter is simple: who holds the preferred shares of [the Company] . . . ? As will be shown, this can *only* be resolved by an adjudication on the [BOL] and various other documents signed at the nexus of the transaction in question, all of which demand arbitration in London and are governed by English Law." Dkt. No. 67-17 at 1. Respondent again reiterated its objection to the arbitrator's jurisdiction to resolve the Purchase Option issue in its amended statement of counterclaims, Dkt. No. 67-25 at 1, in its motion to strike Petitioners' allegations regarding the Preferred Interests, Dkt. No. 67-40 at 5, and its post-hearing brief, Dkt. No. 67-48 at 55. Petitioner thus did not waive its objection to the arbitrator's jurisdiction to determine the Purchase Option issue.

Even so, however, Respondent's argument underlying the objection—that the arbitrator exceeded his authority in awarding unjust enrichment damages and in addressing the question of Levona's ownership of the Preferred Interests—is without merit. The Supreme Court and the Second Circuit have repeatedly "held that parties may delegate threshold arbitrability questions to the arbitrator, so long as the parties' agreement does so by 'clear and unmistakable' evidence." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 530 (2019); *see also First Options of Chi.*, 514 U.S. at 944–45 ("In this manner the law treats silence or ambiguity about

the question '*who* (primarily) should decide arbitrability' differently from the way it treats silence or ambiguity about the question '*whether* a particular merits-related dispute is arbitrable because it is within the scope of a valid arbitration agreement'—for in respect to this latter question the law reverses the presumption.") (emphasis in original). Moreover, when "parties explicitly incorporate rules that empower an arbitrator to decide issues of arbitrability, the incorporation serves as clear and unmistakable evidence of the parties' intent to delete such issues to an arbitrator." *Contec Corp. v. Remote Sol., Co., Ltd.*, 398 F.3d 205, 209 (2d Cir. 2005); *see Lonstein L. Off., P.C. v. Evanston Ins. Co.*, 2022 WL 72302, at *8 (S.D.N.Y. Jan. 6, 2022); *Convergen Energy LLC v. Brooks*, 2020 WL 5549039, at *16 (S.D.N.Y. Sept. 16, 2020); *Paduano v. Express Scripts, Inc.*, 55 F. Supp. 3d 400 (E.D.N.Y. 2014).

The arbitration agreement in the LLCA is broad. It provides that "[a]ny dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof (including the scope or applicability of this agreement to arbitrate) shall be determined by arbitration in New York County in the State of New York or any other mutually agreeable location, before a single arbitrator." Dkt. No. 67-2 § 12.14(a). The mandatory arbitration provision does not just apply to disputes or controversies arising out of the LLCA but also to any disputes or controversies "relating to" the LLCA. *See Louis Dreyfus Negoce S.A. v. Blystad Shipping & Trading Inc.*, 252 F.3d 218, 225 (2d Cir. 2001); *Collins & Aikman Prods. Co. v. Bldg. Sys., Inc.*, 58 F.3d 16, 20 (2d Cir. 1995). The provision also is not limited to claims or controversies relating to breaches of the LLCA but to any dispute, claim or controversy relating to the "termination, enforcement, interpretation, or validity" of the LLCA. *See, e.g.*, *Davitashvili v. Grubhub Inc.*, 2023 WL 2537777 (S.D.N.Y. Mar. 16, 2023); *see also Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 65 (2010).

Moreover, and importantly, the parties clearly and unmistakably delegated to the arbitrators the authority to decide the scope and application or the agreement to arbitrate. The breadth of the authority the parties delegated to the arbitrator is reinforced by their decision that the arbitration would be "administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures." LLCA at 69. Rule 11 of the JAMS Rules and Procedures which provides, in relevant part, that jurisdictional disputes, including disputes over the interpretation and scope of the agreement to arbitrate, will be submitted to the arbitrator:

> A. Once appointed, the Arbitrator shall resolve disputes about the interpretation and applicability of these Rules and conduct of the Arbitration Hearing. The resolution of the issue by the Arbitrator shall be final.
>
> B. Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are the proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator. The Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter.[19]

Dkt. No. 55-1 at 9.

"[I]f a valid [arbitration] agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue." *Id.*; *see also Beijing Shougang Mining Inv. Co., Ltd. v. Mongolia*, 11 F.4th 144 (2d Cir. 2021); *Jock*, 942 F.3d at 624 ("[W]hen parties to an agreement explicitly incorporate rules that empower an arbitrator to decide an issue, 'the incorporation serves as clear and unmistakable evidence of the parties' intent to delegate such issues to an arbitrator.'" (quoting *Wells Fargo Advisors, LLC v. Sappington*, 884 F.3d 392, 396 (2d Cir. 2018)); *Mumin v. Uber Techs., Inc.*, 239 F. Supp. 3d 507, 522–23 (S.D.N.Y. 2017) (finding clear and unmistakable intent based on contract language that

[19] The language "as a preliminary matter" conveys that the arbitrator is to decide the scope of the arbitration before addressing the merits and not to limit the scope of the arbitrator's authority. *Cf. Emilio v. Sprint Spectrum L.P.*, 508 F. App'x 3, 5 (2d Cir. 2013) (summary order); *Parrella v. Orange Rabbit, Inc.*, 2021 WL 4462809, at *8–9 (S.D.N.Y. Sept. 29, 2021).

stated "disputes arising out of or relating to interpretation or application of this Arbitration Provision shall be decided by an Arbitrator and not by a court or judge"); *Fraternity Fund Ltd. v. Beacon Hill Asset Mgmt. LLC*, 371 F. Supp. 2d 571, 575–76 (S.D.N.Y. 2005) (finding clear and unmistakable intent based on contract language that delegated to an arbitrator disputes involving "meaning, construction, validity and/or enforceability"). "'[O]nce the parties have agreed that an arbitrator may decide questions regarding the scope of arbitrable issues in the first instance,' federal courts are indeed required to afford deference to the arbitral tribunal's decision as to that scope." *Beijing Shougang*, 11 F.4th at 156 (quoting *Schneider v. Kingdom of Thailand*, 688 F.3d 68, 76 (2d Cir. 2012)). The Second Circuit has instructed that the Court may disturb the arbitrator's ruling as to jurisdiction only if the ruling did not fall "within his interpretative authority" and if the arbitrators reasoning did not draw "its essence from the agreement to arbitrate" but instead effectively "dispensed its own brand of justice." *Beijing Shougang*, 11 F.4th at 161 (internal quotation marks and citations omitted).

Respondent has not satisfied its burden to show that the arbitrator exceeded his interpretative authority in awarding unjust enrichment damages and in deciding issues regarding Levona's ownership of the Preferred Interests. *See Smarter Tools Inc. v. Chongqing SENCI Import & Export Trade Co., Ltd.*, 57 F.4th 372, 378 (2d Cir. 2023) (burden is on party seeking to vacate the award to show that arbitrator exceeded his authority). The Third Amended Statement of Claims and Response to Counterclaims submitted by Petitioners asserted that Levona had engaged in "egregious and ongoing breaches" of the LLCA. Dkt. No. 31-35 ¶ 1. In the Award, the arbitrator found that Levona breached its obligations arising out of the LLCA, including by bribing an employee of Corp and causing him to disclose confidential information, violating confidentiality obligations itself, influencing Gas's financiers to turn against Petitioners by

causing the arrest of Gas's vessels and doing so without notifying Petitioners, failing to acknowledge that Eletson had fully complied with the terms of the BOL Purchase Option, improperly purporting to act on behalf of the Company in its business dealings with third parties, improperly threatening Eletson and its affiliated officers and directors, improperly purporting to seize control of the Company's board of directors post-March 11, 2022, improperly purporting to assert control over the assets of the Company post March 11, 2022, improperly purporting to call and hold meetings of the Board of Directors post March 11, 2022, and breaching its obligations under the LLCA. Dkt. No. 67-58 at 96–98. The arbitrator did not purport to award damages for breach of the BOL. He awarded damages of $19,677,743,71 for the lost services of the Symi and Telendos without the reciprocal transfer of the Preferred Interests. The damages were based on an estimate of what the Company would have made from the two vessels had it not transferred them and was awarded to the Nominees because they flowed from Levona's refusal to relinquish the Preferred Interests and the Nominees hold all title and interest in the Preferred Interests. *Id.* at 64–65. The arbitrator also awarded $21,777,378.50 as directly calculable losses arising from Levona's conduct that led to the vessel arrests, including lost revenues and fixed costs incurred due to the arrests, payable to the Company as compensatory damages. *Id.* at 65. Finally, the arbitrator awarded $2,000,000 to be paid to the Company from a number of other wrongful acts of Levona including the loss of access to capital, management distraction, and reputational harm. *Id.* at 66.

The arbitrator based his conclusion that he had authority to make these determinations on the language of the arbitration provision in the LLCA, and did not dispense his own brand of industrial justice. The Court need not conclude that it would have reached the same decision as the arbitrator to conclude that he acted within the authority granted him by the parties to

determine his own jurisdiction. *See Beijing Shougang*, 11 F.4th at 158, 161. The dispute—and the arbitrator's ultimate determination of wrongful conduct—arose out of the LLCA and the relationship between the parties formed as a result of the LLCA, and related not just to breaches of the LLCA but also to its termination, enforcement and interpretation. Levona is in error when it asserts that the award of unjust enrichment damages related to events "not governed" by the LLCA.[20] It is precisely as a result of Levona's conduct that the arbitrator determined that the Company and the Nominees suffered the damages the arbitrator found that they had suffered. With respect to the unjust enrichment damages in particular, the arbitrator concluded that it was because Levona had taken unilateral acts—without authority to do so under the LLCA—that the Company had suffered foregone profits.

Levona is mistaken in its argument that the arbitrator was required as a matter of law to forego determination of Petitioners' claims because the arbitrator could not conclude whether Levona had engaged in wrongful conduct arising out of or relating to the LLCA without first making an antecedent determination as to whether Eletson had properly exercised the Purchase Option. Eletson's claim for damages turned upon conduct engaged in by Levona both before and after the exercise of the Purchase Option, and the arbitrator did not award damages for Levona's failure to honor the Purchase Option. Thus, to a large extent, the question of whether Eletson

[20] Thus, Levona's reliance on the dictum from *Smarter Tools* that "vacatur was necessary where, for example, the arbitrators exceeded their powers [by awarding damages] for events not governed by the arbitration agreement," 57 F.4th at 382, is not availing. *Smarter Tools* cited *In re Arbitration Between Melun Indus., Inc. & Strange*, 898 F. Supp. 990, 994–95 (S.D.N.Y. 1990), but the distance between the facts of this case and those of *Melun Industries* demonstrate the weakness of Respondent's argument. In *Melun Industries*, the arbitration provision at issue limited the arbitrator to resolving disputes over a post-closing adjustment and thus the arbitrator exceeded his authority by resolving issues regarding the accuracy of an opening balance sheet. The case bears no resemblance to this one in which the arbitration clause is broad and delegates issues regarding arbitrability to the arbitrator.

had properly exercised the Purchase Option was in the nature of an affirmative defense or an "anticipatory repudiation"—if Eletson had not exercised the option and if Levona had maintained its Preferred Interests, then arguably Levona would not have breached the LLCA and its conduct would not have violated any implied covenant of good faith and fair dealing.

The antecedent determination that the arbitrator was required to make here bears similarity to the antecedent determinations that courts are required to make when analyzing a claim for tortious interference, which only lies if the plaintiff had a business relationship with a third party that the defendant injured, and which may be overcome by a showing by the defendant that interference arose through the exercise of its equal or superior right in the breaching party's business. *See, e.g.*, *Lesnik v. Lincoln Financial Advisors Corp.*, 2020 WL 3057456, at *3 (S.D.N.Y. June 9, 2020) ("Under New York law, a claim for tortious interference with prospective economic advantage comprises four elements: (a) business relations with a third party; (b) that defendant knew of the relationship and interfered with it; (c) defendant acted with the sole purpose of harming the plaintiff or solely out of malice or used wrongful means; and (d) injury to that business relationship."); *Alvarado v. Mount Pleasant Cottage Sch. Dist.*, 404 F. Supp. 3d 763, 791 (S.D.N.Y. 2019) ("It is imperative that, in bringing a tortious interference claim, a plaintiff identify the relevant terms of the contract that existed that were breached by defendant.") (internal quotation marks omitted); *Lesesne v. Brimecome*, 918 F. Supp. 2d 221, 227 (S.D.N.Y. 2013) (noting the requirement that a plaintiff "identify the potential customers at issue when asserting a cause of action for interference with prospective economic advantage"); *White Plains Coat & Apron Co., Inc. v. Cintas Corp.*, 835 N.Y.S.2d 530, 532 (2007) ("In response to such a claim, a defendant may raise the economic interest defense—that it acted to protect its own legal or financial stake in the breaching party's business."). In other words,

judicial bodies are called upon to make antecedent determinations about rights and obligations arising out of contracts even where the judicial body would not have jurisdiction to decide a dispute arising out of those contracts.

Further, once the arbitrator had properly seized jurisdiction of the dispute, it was not outside the scope of his remedial authority to determine that the Preferred Interests should be transferred to the Nominees. As the arbitrator reasoned, because Eletson asserted breaches of the LLCA, the parties were not required to "arbitrate their disputes in two steps: first, go to London to adjudicate performance under the Transaction Documents and then second, come to JAMS to determine breaches under the [LLCA]." *Id.* at 14.

B. Adjudication of the Rights and Duties of Non-Parties to the Arbitration and Non-Signatories to the Arbitration Agreement

Respondent argues that the arbitrator improperly adjudicated the rights and duties of non-parties to the arbitration proceedings and non-signatories to the LLCA. Dkt. No. 50 at 17–22. Specifically, Respondent complains that the arbitrator could not have awarded damages to the Company, as a non-party to the arbitration proceedings, or to the Nominees, as non-parties to the arbitration proceedings and non-signatories to the LLCA. *Id.* at 19. It also takes issue with the arbitrator's award of damages against Murchinson and Pach Shemen as Levona's alter egos because Murchison and Pach Shemen were not parties to the arbitration proceedings and are not signatories to the LLCA. *Id.* at 22–23.

1. The Award of Relief to Non-Signatories and Non-Parties

Respondent argues that the arbitrator erred and exceeded his powers under the arbitration agreement by adjudicating the rights and obligations of the Company and the Nominees. Dkt. No. 50 at 19–22; Dkt. No. 59 at 6. Respondent argues that the arbitrator was without power to award damages to the Nominees because they were neither signatories to the LLCA nor parties

to the arbitration proceedings, Dkt. No. 50 at 19, and that he lacked power to award damages to Gas because, although it was a signatory to the LLCA, it was not a party to the arbitration, *id.* at 19–20. The argument is without merit.

The arbitration agreement in the LLCA is broad. It commits to the arbitrator the resolution of "[a]ny dispute, claim or controversy arising out of or relating to th[e LLCA] or the breach, termination, enforcement, interpretation or validity thereof (including the determination of the scope or applicability of this agreement to arbitrate) . . . ." Dkt. No. 67-2 at 69; *see Alghanim v. Alghanim*, 828 F. Supp. 2d 636, 652 (S.D.N.Y. 2011) ("An arbitration clause covering '[a]ny claim or controversy arising out of or relating to th[e] agreement,' is 'the paradigm of a broad clause.'" (quoting *Collins & Aikman Prods. Co.*, 58 F.3d at 20)); *see also Specht v. Netscape Commc'ns Corp.*, 306 F.3d 17, 35–36 (2d Cir. 2002); *Genesco, Inc. v. T. Kakiuchi & Co., Ltd.*, 815 F.2d 840, 845 (2d Cir. 1987). It also provides "[t]he arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures." Dkt. No. 67-2 at 69.

"Where an arbitration clause is broad, arbitrators have the discretion to order such remedies as they deem appropriate." *ReliaStar Life Ins. Co. of N.Y.*, 564 F.3d at 86. "It is not the role of the courts to undermine the comprehensive grant of authority to arbitrators by prohibiting an arbitral security award that ensures a meaningful final award." *Banco de Seguros del Estado v. Mut. Marine Off., Inc.*, 344 F.3d 255, 262 (2d Cir. 2003); *see also Forschner Grp., Inc. v. Arrow Trading Co., Inc.*, 124 F.3d 402, 406 (2d Cir. 1997). Indeed, "arbitrators are generally afforded greater flexibility in fashioning remedies than are courts." *Benihana, Inc. v. Benihana of Tokyo, LLC*, 784 F.3d 887, 902 (2d Cir. 2015); *see Shasha v. Malkin*, 2021 WL 11960275, at *7 (S.D.N.Y. Mar. 24, 2021) ("Arbitrators 'may grant equitable relief that a Court

could not.'" (quoting *Sperry Int'l Trade, Inc. v. Gov't of Israel*, 532 F. Supp. 901, 905 (S.D.N.Y. 1982), *aff'd*, 689 F.2d 301 (2d Cir. 1982))); *see also* 1 M. Domke, Domke on Commercial Arbitration § 35:1 (3d ed. 2003) (hereinafter "Domke on Commercial Arbitration") ("Limited only by the broad concepts of equity and justice, an arbitrator has a plethora of remedies, both legal and equitable, to choose from in structuring a remedy."). "Additionally, the parties to the arbitration agreement can broaden the remedies available to them under the arbitration agreement by incorporating the rules of an arbitration administering agency." Domke on Commercial Arbitration § 35:2. Here, JAMS Rule 24 provides: "The Arbitrator may grant any remedy or relief that is just and equitable and within the scope of the Parties' Agreement, including, but not limited to, specific performance of a contract or any other equitable or legal remedy." Dkt. No. 67-3.

The award to the Nominees and the Company here fell within the broad authority the parties delegated to the arbitrator. An arbitrator under a broad arbitration provision has even greater power than a court to award relief in favor of Gas and/or the Nominees as third-party beneficiaries of the LLCA. *Benihana, Inc.*, 784 F.3d at 902; *Sperry Int'l Trade*, 689 F.2d at 306 ("Under New York law arbitrators have power to fashion relief that a court might not properly grant."). The arbitrator concluded that Respondent wrongfully denied the Nominees the Preferred Interests to which they were entitled and that, by depriving them of the Preferred Interests while retaining the two vessels, Levona was unjustly enriched at the Nominees' expense. The arbitrator reasoned that the damages "flow[ed] directly from Levona's refusal to relinquish the preferred interests, and the Preferred Nominees hold all title and interest in the preferred interests." Dkt. No. 47-5 at 64. The arbitrator had the authority to hold that the Preferred Interests were transferred to the Nominees and award the Nominees damages. The

Court need not agree with that reasoning to conclude that it was within the arbitrator's power to determine that Levona's breach of its obligations to Petitioners could be most readily and effectively redressed by giving the party most directly injured the benefit the arbitrator found that Respondent unjustly enjoyed. As to the Company, the arbitrator determined that they too were directly injured by the conduct that the arbitrator found violated the LLCA—Levona caused the arrests of the Company's vessels and committed other breaches of contract. If it was within the power of the arbitrator to determine whether Levona breached the LLCA, it follows that it would be within the power of the arbitrator to grant the relief that the arbitrator believed was most effective to redress that breach.

Respondent's arguments to the contrary are without merit. Respondent contends that a non-party to the arbitration agreement that did not participate in the arbitration is not bound by the award rendered in the arbitration. *See, e.g.*, *Ali A. Tamini v. M/V Jewon*, 808 F.2d 978, 981 (2d Cir. 1987); *Dist. Council No. 9 v. APC Painting, Inc.*, 272 F. Supp. 2d 229, 240 (S.D.N.Y. 2003). Respondent's point that the Nominees and the Company were non-parties and that they did not participate in the arbitration has force. Neither the Nominees nor the Company were named as parties. Although representatives of each testified, they did so in their capacity as witnesses, and not in their capacity as parties. The Court has reviewed the arbitration filings and agrees with Respondent that it was not until the pre-hearing brief, months after the arbitration had commenced, that Petitioners asserted that the Preferred Interests should be transferred to the Nominees and not until after the hearing and in its proposed order that Petitioners asked that damages be awarded to Gas and to the Nominees and not to itself.

But that point gets Respondent only so far. Unlike the arbitrator's decision to award relief as against non-parties to the arbitration discussed below, the arbitrator's decision to award

damages to non-parties did *not* "bind nonparties to the arbitration." *Soleimani v. Andonian*, 2022 WL 748246, at *5 (S.D.N.Y. Mar. 10, 2022). It bound Levona, a party to both the arbitration and the underlying contract, to pay damages to non-parties. Accordingly, the award "do[es] not bind the[] non-parties in the sense proscribed by decisional law." *Matter of Arb. Between Cole Pub. Co., Inc. v. John Wiley & Sons, Inc.*, 1994 WL 532898, at *4 (S.D.N.Y. Sept. 29, 1994). Nor does the award "unnecessarily determine the rights of non-parties," as in cases where petitioners sought to confirm awards that benefitted nonparties *without resolving the parties' dispute*. *See, e.g.*, *Techcapital Corp. v. Amoco Corp.*, 2001 WL 267010, at *16 (S.D.N.Y. Mar. 19, 2001).

Respondent also relies upon the Sixth Circuit decisions in *NCR Corp. v. Sac-Co, Inc.*, 43 F.3d 1076 (6th Cir. 1995), *Nationwide Mutual Insurance Co. v. Home Insurance Co.*, 330 F.3d 843, 849 (6th Cir. 2003), and *Armco Employees Independent Federation, Inc. v. AK Steel Corp.*, 149 F. App'x 347 (6th Cir. 2005). None is apposite. In *NCR Corp.*, all parties agreed that the arbitrator exceeded his powers by awarding "class action type relief in a case that was not a class action." 43 F.3d at 1080. One of NCR's authorized dealers asserted a claim in arbitration of unfair competition; the arbitrator not only awarded that dealer punitive damages but also awarded "punitive damages to all of NCR's United States nonservicing dealers even though only one nonservicing dealer . . . was a party to the action before the arbitrator." *Id.* at 1078. In *Nationwide*, the reviewing court had previously determined that the third-party eventually awarded relief could not be a party to the arbitration given its contractual relationship with the parties to the arbitration, and that the only relief available in the arbitration was to the parties before the arbitrator. 330 F.3d at 847 ("In *Nationwide I*, we held that Nationwide could not bring suit directly against CIGNA, or compel CIGNA to submit to arbitration, because of a third-party

disclaimer provision in the assumption contract between Home and CIGNA. We construed this disclaimer provision as a limitation on the obligations CIGNA undertook in its assumption contract with Home. Therefore, Nationwide's only recourse was against Home, and CIGNA and its affiliates were not parties to the arbitration."). The court concluded that the award was in manifest disregard of the law and the Circuit's prior opinion because it purported to adjudicate and create rights that were not the subject of the arbitration. *Id.* Put differently, the court in *Nationwide* held that relief could not be awarded to a third-party because the relevant contracts did not provide for it. *Id.* at 848 ("Thus, the arbitration award unambiguously exceeds the terms of the Nationwide-Home contractual dispute."). Notably, the court did not contest the proposition proffered by the appellee that, if the award was construed, simply to direct relief by which the appellant could discharge its legal obligations, it could be confirmed. *Id.* Finally, in *Armco*, the Sixth Circuit held that the labor arbitrator exceeded his powers by awarding relief in an arbitration brought by the defendant's apprentices who complied with the collective bargaining agreement's grievance procedures also to those apprentices who did not comply with those grievance procedures. *Armco*, 149 F. App'x at 350–52. The court concluded, "[l]imiting relief to those apprentices who properly complied with the group grievance procedure is consistent with the terms of the CBA" and that the arbitrator's award to all apprentices, including those who did not comply with the grievance procedure demonstrated a "clear infidelity" to the collective bargaining agreement because it conflicted not only with the terms of the collective bargaining agreement, but also with "the parties' intent in entering into an agreement that sets forth such detailed provisions for filing grievances." *Id.* at 351–52.

The cases offered by Respondent thus do not stand for the universal proposition that an arbitrator determining a dispute under a broad arbitration agreement lacks authority to grant

monetary relief directly to third parties. In those cases, the arbitrator's award either depended on the determination of the rights of persons who were not parties to the arbitration, or granted relief to parties that a court had previously held could not be awarded relief in the arbitration. In this case, by contrast, the Award did not rest upon a determination that a wrong was committed as against the Company or the Nominees independent of the wrongs committed to Petitioners. It rested upon a determination the rights of Corp and Holdings—including the right to exercise the Purchase Option—were violated and that the payment of monies to the third parties was the most effective means of providing relief. The Award does direct a remedy by which Respondent will "discharge its legal obligations" to Petitioners. *Nationwide*, 330 F.3d at 847. The Award thus cannot be disturbed on the basis that because relief was directed to persons other than the Petitioners the arbitrator exceeded his authority under the arbitration agreement.

2. The Award of Relief Against Non-Parties

Respondent next argues that because Murchinson and Pach Shemen were not parties to the arbitration, the arbitrator could not award relief against them and in favor of Petitioners. Dkt. No. 50 at 22-23; Dkt. No. 59 at 8. For their part, Petitioners assert that they seek *confirmation* of the award only as against Levona, and not against Murchinson or Pach Shemen. Dkt. No. 54 at 13. Petitioners argue that—with respect to the liability of Murchinson and Pach Shemen—the Court should merely confirm the *factual findings* of the arbitrator regarding the roles and actions of Murchison and Pach Shemen, as the issues of the relationship among Levona, Murchinson, and Pach Shemen were before the arbitrator and the arbitrator's findings cannot be revisited by a court on a petition to confirm an award. Dkt. No. 54 at 13. Specifically, the arbitrator based his award of relief against Murchison and Pach Shemen on his conclusion that "Levona, Murchinson, and Pach Shemen, are each alter egos of the other concerning every fact proven in

this matter and every item of relief awarded herein." Dkt. No. 67-58 at 96. As a result, "and for the avoidance of any doubt, any judgments against Levona are also against each alter ego." *Id.*

Respondent's argument has merit. "[A] gateway dispute about whether the parties are bound by a given arbitration clause raises a 'question of arbitrability' for a court to decide." *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002); *see Schneider v. Kingdom of Thailand*, 688 F.3d 68, 71 (2d Cir. 2012) ("The question whether the parties have submitted a particular dispute to arbitration, i.e., the question of arbitrability, is an issue for judicial determination unless the parties clearly and unmistakably provide otherwise." (quoting *Howsam*, 537 U.S. at 83)). "[A]rbitration is simply a matter of contract between the parties; it is a way to resolve those disputes—but only those disputes—that the parties have agreed to submit to arbitration." *First Options of Chi.*, 514 U.S. at 943. Thus, "a decision whether parties other than those formally signatories to an arbitration clause may have their rights and obligations determined by an arbitrator when that issue has not been submitted to him is not within the province of the arbitrator himself but only of the court." *Orion Shipping & Trading Co. v. E. States Petroleum Corp. of Panama, S.A.*, 312 F.2d 299, 301 (2d Cir.), *cert. denied*, 373 U.S. 949 (1963). "[W]here the petitioners contend that they are not 'bound to [the] arbitration agreement, the issue of arbitrability is for the Court in the first instance.'" *Kwatin v. Mason*, 356 F. Supp. 3d 343, 348 (S.D.N.Y. 2018) (quoting *Boroditskiy v. European Specialties LLC*, 314 F. Supp. 3d 487, 493 (S.D.N.Y. 2018)); *see also Nat'l Union Fire Ins. Co. of Pittsburgh v. Stucco Sys., LLC*, 289 F. Supp. 3d 457, 466 (S.D.N.Y. 2018) (stating that "whether [the non-signatory] is to be a party to the [arbitration agreement] is an issue for judicial determination first"); *Boroditskiy*, 314 F. Supp. 3d at 493 (noting that "in cases where a party disputes whether it is bound to an arbitration agreement, the issue of arbitrability is for the Court in the first instance" (quotation

marks omitted)); *Herman Miller, Inc. v. Worth Cap., Inc.*, 173 F.3d 844, (2d Cir. 1999) (summary order) ("The question of 'whether a person is a party to [an] arbitration agreement' is a threshold question to be determined by the court, and not by an arbitrator." (quoting *Interbras Cayman Co. v. Orient Victory Shipping Co.*, 663 F.2d 4, 7 (2d Cir.1981) (per curiam))). Although parties may delegate questions of arbitrability to the arbitrator "so long as the parties' agreement does so by 'clear and unmistakeable' evidence," "before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists." *Henry Schein, Inc.*, 139 S. Ct. at 530 (quoting *First Options of Chi.*, 514 U.S. at 944); *see Pacelli v. Augustus Intel., Inc.*, 459 F. Supp. 3d 597, 605 (S.D.N.Y. 2020). These principles stem from the fact that arbitration is "a creature of contract." *Starke v. SquareTrade, Inc.*, 913 F.3d 279, 288 (2d Cir. 2019); *see AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 351 (2011). "[A]rbitration 'is a matter of consent, not coercion.'" *Stolt-Nielsen*, 559 U.S. at 681 (quoting *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989)). Accordingly, "the FAA does not require parties to arbitrate when they have not agreed to do so." *Volt*, 489 U.S. at 478 (quoting *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 n.12 (1967)); *see also Stolt-Nielsen*, 559 U.S. at 683 (holding that "parties may specify *with whom* they choose to arbitrate their disputes").

There are limited circumstances in which a person who is not party to an arbitration agreement will be bound by an arbitral award. A court upon motion may *compel* a non-signatory to an arbitration agreement to participate in an arbitration. The Second Circuit has recognized five theories for requiring non-signatories to arbitrate: "1) incorporation by reference; 2) assumption; 3) agency; 4) veil-piercing/alter ego; and 5) estoppel." *Thomson-CSF, S.A. v. Am. Arb. Ass'n*, 64 F.3d 773, 776 (2d Cir. 1995); *see also Oriental Com. & Shipping Co. v. Rosseel,*

N.V., 609 F. Supp. 75, 78 (S.D.N.Y. 1985) ("It is within the province of this Court to determine whether Oriental S.A., although not formally a party to the arbitration agreement, should be made a party to the arbitration proceeding in addition to Rosseel and Oriental U.K."). District courts are instructed to "narrowly construe these five theories, each of which is governed by ordinary principles of contract and agency law." *Boroditskiy*, 314 F. Supp. 3d at 493. As such, an "agreement to arbitrate does not bind an agent acting on behalf of a disclosed principal 'unless there is clear and explicit evidence of the agent's intention to substitute or superadd his personal liability for, or to, that of his principal.'" *Veera v. Janssen*, 2005 WL 1606054, at *3 (S.D.N.Y. July 5, 2005) (quoting *Lerner v. Amalgamated Clothing & Textile Workers Union*, 938 F.2d 2, 5 (2d Cir. 1991)).

In addition, a person who is not a party to an arbitration agreement may nonetheless become bound by the arbitrator's award if that person initiates the arbitration or participates, without objection, in the arbitration proceedings. *Cf. Cole Publishing Co.*, 1994 WL 532898, *4 ("[I]t has long been recognized that an arbitration award cannot be enforced against a non-party to the arbitration clause who did not participate in arbitration proceedings."). Although "arbitrators do not have the power to bind a corporation which is not a party to the arbitration or a voluntary participant in the arbitration proceeding," *Am. Renaissance Lines, Inc. v. Saxis S.S. Co.*, 502 F.2d 674, 677 (2d Cir. 1974), they do have the authority to bind a voluntary participant in the arbitration proceeding, *see LGC Cap. Holdings, Inc. v. Julius Klein Diamonds, LLC*, 238 F. Supp. 3d 452, 473 (S.D.N.Y. 2017) (holding that individual non-signatories to an arbitration agreement "waived any right to object to the imposition of personal liability" by participating voluntarily in the proceeding, including by listing themselves in their personal capacity as respondents in the proceeding); *Halley Optical Corp. v. Jagar Int'l Mktg. Corp.*, 752 F. Supp.

638, 639–40 (S.D.N.Y. 1990) (finding waiver of objection to the imposition of personal liability where an individual participated in arbitration in order to ensure a party does not "participate in an arbitration, with the assurance that if it loses it may later challenge whether it had ever agreed to arbitration").

Finally, an alter ego to a participant in an arbitration or a party to an arbitration agreement can also be required to satisfy an arbitral award in the absence of an order compelling a party to arbitrate, or of actual participation in the arbitral proceedings. *See, e.g.*, *Blue Whale Corp. v. Grand China Shipping Dev. Co., Ltd.*, 722 F.3d 488 (2d Cir. 2013). However, in that circumstance, the proper vehicle is not an application under the FAA or the New York Convention to confirm the award issued in connection with a proceeding in which the third party did not participate and was not compelled to participate. An award against a person who is not a party to an arbitration agreement or who has not participated either voluntarily or by compulsion in an arbitration proceeding cannot be confirmed. The award may be confirmed only to the extent that it orders relief against a party or a participant. If the prevailing party seeks to hold the alter ego responsible for the relief awarded by the arbitrator, it must do so through a separate action in court to pierce the corporate veil. *See GE Transp. (Shenyang) Co. v. A-Power Energy Generation Sys., Ltd.*, 2016 WL 3525358, at *6 (S.D.N.Y. June 22, 2016); *APC Painting, Inc.*, 272 F. Supp. 2d at 240 ("[C]ase law is clear that in the commercial arbitration context the corporate veil cannot be pierced as part of a motion to confirm the arbitration award." (citing *Productos Mercantiles E Endustriales, S.A. v. Faberge USA, Inc.*, 23 F.3d 41, 46–47 (2d Cir. 1994))); *see also Orion Shipping & Trading Co.*, 312 F.2d at 301 ("It may well be . . . that Eastern Panama is thoroughly dominated by Signal, and that Signal is properly accountable on an 'alter ego' theory. But we hold that an action for confirmation is not the proper time for a

District Court to 'pierce the corporate veil.'"). "[T]he question of whether a third party not named in an arbitral award may have that award enforced against it under a theory of alter-ego liability . . . is one left to the law of the enforcing jurisdiction, here the Southern District of New York, under the terms of Article III of the New York Convention," *CBF Industria de Gusa S/A v. AMCI Holdings, Inc.*, 850 F.3d 58, 74 (2d Cir.), *cert. denied*, 583 U.S. 1039 (2017), in which the Court applies the federal common law of veil piercing, *see, e.g.*, *Global Gaming Philippines, LLC v. Razon*, 2023 WL 5935640 (S.D.N.Y. Sept. 12, 2023).[21]

The arbitrator thus exceeded his authority when he ruled that Pach Shemen and Murchinson were required to pay damages to Eletson. *See Orion Shipping & Trading Co.*, 312 F.2d at 300 (concluding that the district court "held, properly we think, the arbitrator exceeded his powers in determining the obligations of a corporation which was clearly not a party to the arbitration proceeding, and that Signal's motion to vacate the award against it should be granted"); *Porzig*, 497 F.3d at 140–41 (vacating arbitral award of relief against a non-party to the arbitration after stating that "[t]he authority of the arbitral panel is established only through the contract between the parties who have subjected themselves to arbitration, and a panel may not exceed the power granted to it by the parties in the contract"). Here, only Levona—not Murchinson or Pach Shemen—was party to the LLCA, which contained the arbitration provision that Petitioners invoked. There is no dispute that Murchinson and Pach Shemen did not agree to the LLCA, were not signatories to the LLCA, were not parties to the LLCA, and were not bound

[21] "An alter ego relationship is not easy to establish," and exists "only where the instrumentality is so extensively controlled that a relationship of principal and agent is created or where affording the entity separate juridical status would work fraud or injustice." *Esso Expl. & Prod'n Nigeria Ltd. v. Nigerian Nat'l Petroleum Corp.*, 40 F.4th 56, 59 (2d Cir. 2022); *Gater Assets Ltd. v. AO Moldovagaz*, 2 F.4th 42, 55 (2d Cir. 2021) (same). Common ownership and control is not enough. *See, e.g.*, *Thomson-CSF*, 64 F.3d at 788.

by the LLCA. Murchinson and Pach Shemen were thus also not bound by the arbitration provision in the LLCA. There also is no evidence or argument that Levona had the authority to bind Murchinson or Pach Shemen to the LLCA. The arbitrator had no authority to make Murchinson or Pach Shemen parties to the arbitration and, even if he did, he did not exercise that authority. Petitioners did not seek an order from a court compelling non-signatories Murchinson or Pach Shemen to participate in the arbitration under the LLCA. Petitioners never claimed that Murchinson or Pach Shemen were required to participate in the arbitration under a theory of incorporation by reference, assumption, agency, veil-piercing, or estoppel. The JAMS Comprehensive Arbitration Rules and Procedures, pursuant to which Eletson and Levona agreed to arbitrate in the LLCA, Dkt. No. 67-2 § 12.14(a), requires each party to serve on the other a Notice of Claims, "afford[ing] all other Parties reasonable and timely notice of its claims," Dkt. No. 67-3 § 9. None of Eletson's Notice of Claims name Murchinson or Pach Shemen or seek relief against Murchinson or Pach Shemen; Eletson does not claim here that it served Murchinson or Pach Shemen with its Notice of Claims. Indeed, the Third Amended Statement of Claims and Response to Counterclaims which was the basis of Eletson's claims in the arbitration names only Levona; it does not name Pach Shemen or Murchinson, seek to compel them to participate in the arbitration, or seek relief against them. Dkt. No. 31-35. Among other things, Petitioners sought as relief "the damages that they have suffered because of Levona's unlawful conduct together with punitive damages and attorneys' fees and costs." *Id.* ¶ 6(e). Indeed, it was not until after the hearing had concluded that Petitioners asked the arbitrator to award any relief against Pach Shemen and Murchinson and even then it did not do so by serving Murchinson or Pach Shemen with papers or seeking to bring them in to the arbitration. Snuck into the second page of Petitioners' post-hearing proposed order was the request that Murchinson

and Pach Shemen (along with hedge funds Nomis Bay and BPY) should be found to be alter egos of Levona and responsible for "every item of relief awarded herein." Dkt. No. 67-47 at 2. Tellingly, even then, the proposed order asked only that Levona pay damages.[22] *Id.* at 6–7. But, by that point the hearing was over. Pach Shemen and Murchinson had no notice prior to the hearing that they may ultimately be deemed liable in the proceedings, no opportunity to be heard, and no opportunity to defend themselves. Their rights were adjudicated without affording them any opportunity to be heard.

The Court therefore vacates the portions of the Award that purport to find Murchinson and Pach Shemen liable, or that require them to pay damages to Petitioners, the Company, or the Nominees. Section 11 of the FAA gives the court the power to modify or correct an award on the ground that "the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matters submitted." 9 U.S.C. § 11. The power is discretionary, and not mandatory. *See Sociedad Armadora Aristomenis Panama, S.A. v. Tri-Coast S.S. Co.*, 184 F. Supp. 738, 741 (S.D.N.Y. 1960); *see also Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 197–98 (2000). In the alternative, the FAA gives the Court the power to vacate an award on the grounds that the arbitrator exceeded his power. 9 U.S.C. § 10(a)(4); *see Smarter Tools*, 57 F.4th at 381–82. In this case, it is an appropriate exercise of discretion to modify the Award and not to vacate it in its entirety. The questions of whether Levona was liable to Eletson and whether Levona could be held responsible under the LLCA for the conduct of Murchinson and Pach Shemen were before the arbitrator. That the arbitrator exceeded his powers in ordering relief directly against Murchinson and Pach

[22] The Award, which recites that Levona, Murchinson, and Pach Shemen, pay compensatory and punitive damages and attorney's fees, costs, expenses, and interest, as alter egos, jointly and severally, Dkt. No. 67-58 at 99-100, exceed the relief requested by Eletson.

Shemen—because they were not signatories to the LLCA and were not parties to the arbitration—does not alone relieve Levona from liability for its role in the conduct of those entities.

Petitioners do not dispute that Pach Shemen and Murchinson cannot be bound as parties to the Award. They respond only that the Court should confirm "the factual findings involving the rules and actions of Murchinson and Pach Shemen, as these issues were arbitrated and submitted to Justice Belen for adjudication." Dkt. No. 54 at 13. That argument, however, is a non-sequitur. Under the New York Convention and the FAA, the Court does not confirm "factual findings." As Eletson itself emphasizes, the Court "cannot revisit or question the fact finding . . . that produced a challenged arbitration award." Dkt. No. 54 at 14 (citing *PDV Sweeny, Inc. v. Conocophillips Co.*, 670 F. App'x 23, 24 (2d Cir. 2016) (summary order)). It confirms an arbitral award. *Diapulse Corp. of Am. v. Carba, Ltd.*, 626 F.2d 1108, 1110 (2d Cir. 1980). A portion of the Award here, if confirmed in its entirety, would direct Murchinson and Pach Shemen to pay damages. And whether Pach Shemen and Murchinson are liable to pay damages was not a question submitted to Justice Belen for decision. Thus, it is no answer to say that Pach Shemen and Murchinson can raise their arguments in an action by Petitioners for enforcement. Petitioners have not demonstrated that they are entitled to an Award confirmed against Murchinson and Pach Shemen and Respondent has shown that that portion of the Award must be vacated. It may be that Petitioners could have obtained an order compelling Murchison and Pach Shemen to participate in the arbitration even though they were not signatories to the LLCA. Eletson may yet have the opportunity to seek to hold Murchinson and Pach Shemen responsible for Levona's obligations under the Award. But, not having sought to make Murchinson or Pach Shemen a party to the arbitration, they must do so through a separate action

for veil-piercing. They may not do so through findings and an award as to which Murchinson and Pach Shemen had no opportunity to be heard.

C. Arbitration of Claims Barred by the Bankruptcy Stay

Respondent argues that the arbitrator violated the Lift Stay Order and the bankruptcy stay by determining that the Preferred Interests had been assigned to the Nominees and by awarding damages based on the alleged bad faith bankruptcy filing. Dkt. No. 50 at 25–27. Petitioners respond that the arbitrator acted within his authority under the Lift Stay Order and that Respondent has waived any claim based on the arbitrator's failure to operate within the confines of that order by not raising any issue until after the arbitration record closed and then only with respect to the fee award. Petitioners suggest that the claim for violation of the Status Quo Injunction was pending before April 17, 2023 because the issue of the bankruptcy filing having been made in bad faith was the subject of correspondence and motion practice before the arbitrator in March 2023, and because the arbitrator himself stated that the filing of the involuntary petition may have been a violation of the Status Quo Injunction. Thus, Petitioners argue that the violation of the Status Quo Injunction was not a new claim but an issue relating to a preexisting order of the Tribunal. Dkt. No. 54 at 19.

The arbitrator's exercise of authority did not violate the automatic stay or the Lift Stay 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. "Section 362 of the Bankruptcy Code provides that the filing of a bankruptcy petition creates an automatic stay against 'the commencement or continuation . . . of a judicial, administrative, or other action or proceeding *against the debtor* that was or could have been commenced before the commencement of the case.'" *Rexnord Holdings, Inc. v. Bidermann*, 21 F.3d 522, 527 (2d Cir. 1994) (quoting 11 U.S.C. § 362(a)(1)). "The general purpose" underlying

the provision "is to grant complete, immediate, albeit temporary relief to the debtor from creditors, and to prevent dissipation of the debtor's assets before orderly distribution to creditors can be effected." *S.E.C. v. Brennan*, 230 F.3d 65, 70 (2d Cir. 2000) (quoting *Penn Terra Ltd. v. Dep't of Envtl. Res.*, 733 F.3d 267, 271 (3d Cir. 1984)). For this reason, "any proceedings or actions described in section 362(a)(1) are void and without vitality if they occur after the automatic stay takes effect." *Rexnord Holdings*, 21 F.3d at 527. However, "the automatic stay is inapplicable to suits *by* the bankrupt 'debtor,' as he is now called." *Martin-Trigona v. Champion Fed. Sav. & Loan Ass'n*, 892 F.2d 575, 577 (7th Cir. 1989); *see also Koolik v. Markowitz*, 40 F.3d 567, 568 (2d Cir. 1994) (per curiam) ("[T]he automatic stay is applicable only to proceedings 'against' the debtor."); *In re Berry Ests., Inc.*, 812 F.2d 67, 71 (2d Cir. 1987) (holding that the automatic stay did not apply to state court actions brought by the debtor); *Assoc. of St. Croix Condo. Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 448 (3d Cir. 1982) ("Section 362 by its terms only stays proceedings against the debtor."). Even if it would have an adverse impact on the property of the bankruptcy estate, an action against a third party is not subject to the automatic stay unless it is "legally certain[] to impact estate property." *Picard v. Fairfield Greenwich Ltd.*, 762 F.3d 199, 208 (2d Cir. 2014). [23]

[23] The automatic stay does not "implicate mere ministerial acts performed by the clerk following the completion of the judicial function," but does prevent the court from making any "judicial decisions . . . after the filing of petitions in bankruptcy." *Rexnord Holdings,* 21 F.3d at 528; *see In re Fogarty*, 39 F.4th 62, 77 (2d Cir. 2022) ("The 'ministerial act' exception represents an exceedingly narrow category of actions that avoid the automatic stay."). Petitioner does not argue that the act of confirmation under the New York Convention and the FAA is merely ministerial.

Neither Eletson's claims nor the Award violated the automatic stay.[24] Through the arbitration, Eletson sought a declaration and determination that it had complied with all of the obligations necessary to complete the option and that the option was exercised and completed on March 11, 2022, Dkt. No. 31-35 at 23, and that Levona be ordered to transfer any preferred shares it was found to have to Eletson, *id.* at 24. Eletson did not assert claims against Holdings. Moreover, although Eletson's claims included "factual allegations" regarding the election of the Nominees that might overlap in any fraudulent conveyance action that the Trustee in the Holdings' bankruptcy case or another party would choose to bring in the future to recover assets of the estate, the "legal bases" for Eletson's claim in the arbitration is "independent" of any such claim and do not "depend in substance" on the question whether Eletson or Holdings may have wrongfully transferred its interest in the option to the Nominees. *Picard*, 762 F.3d at 209. Thus, Levona cannot use the automatic stay—a statutory safeguard "intended to protect the debtor and to assure equal distribution among creditors"—as "a weapon against the estate." *Winters ex rel. McMahon v. George Mason Bank*, 94 F.3d 130, 135 (4th Cir. 1996) (quoting *In re Globe Inv. & Loan Co.*, 867 F.2d 556, 560 (9th Cir. 1989)); *see also Leeber Realty LLC v. Trustco Bank*, 2019 WL 498253, at *11 (S.D.N.Y. Feb. 8, 2019) ("Because the automatic stay's primary purpose is to preserve a bankrupt's estate for the benefit of all creditors, courts consistently hold that actions

[24] Eletson argues that Levona waived its rights to complain that the arbitrator exceeded his authority because it raised the issue about which it complains with the bankruptcy court in May 2023, but then did not file additional motions for relief. Dkt. No. 54 at 20. That argument is without merit. Levona moved to strike Eletson's allegations that the Preferred Interests had been transferred to the Nominees or, in the alternative, to dismiss Eletson's claims. Dkt. No. 31-37.

brought *by* a debtor are not subject to the automatic stay."), *aff'd*, 798 F. App'x 682 (2d Cir. 2019) (summary order).[25]

While Eletson sought an order compelling Levona to transfer to Eletson any preferred shares it was found to have, Dkt. No. 67-24 at 23, that request is more accurately understood as a demand that the arbitrator order Levona to turn over the Preferred Interests to the Company or whomever, under the BOL, the Company elected as its nominees. As Eletson has argued, the question regarding the identity of the recipient of the preferred shares would be a matter of indifference to Levona in its capacities as contractual counterpart under the LLCA and the BOL. If the Company did in fact exercise its option to buy Levona's preferred shares as the arbitrator found, the Company had the sole authority, without any input by Levona, to determine who should receive the preferred shares. Levona, which, pursuant to the arbitrator's findings, no longer had control over the Company, had no interest in the matter.

For all of those reasons, Levona is mistaken in its argument that the arbitrator improperly usurped the powers of the bankruptcy court by determining that Eletson had properly exercised the option and that, as a result, the Nominees were entitled to the Preferred Interests. Nor will this Court have violated the Automatic Stay by confirming the Award. The Award, by its terms, only declares that "Eletson effectively exercised the buyout option granted in the Binding Offer Letter," that "as of March 11, 2022, . . . Levona had no membership interest in" the Company, that the Company "exercised its rights under *the BOL* to nominate three entities—Fentalon, Apargo, and Desimusco, (the Preferred Nominees)—affiliated with the principals of Claimants,

[25] Levona's counterclaims against Eletson arguably did constitute an action against the debtor. *See Koolik*, 40 F.3d at 568 (holding that "a counterclaim against a plaintiff who becomes a bankruptcy debtor is an 'action or proceeding against the debtor' within the meaning of § 362(a)(1), notwithstanding the fact that the plaintiff initiated the lawsuit"). However, the bankruptcy court permitted those claims to go forward.

as the parties to receive the preferred interests in the Company," and that "[t]he preferred interests in the Company were transferred to the Preferred Nominees, effective as of March 11, 2022, and the Preferred Nominees are permitted transferees *under the LLCA*." Dkt. No. 47-5 at 96–97 (emphasis added). In short, the arbitrator adjudicated claims only as between Eletson and Levona and only under the BOL and LLCA. The arbitrator did not purport to address the questions—now raised by Levona—whether the Company or Holdings improperly elected the Nominees or whether the transfer to the Nominees of the Company's right to the Preferred Interests effected a fraud on the creditors of Holdings and the arbitrator's findings can have no collateral estoppel effect on those questions. *See* Restatement (Second) of Judgments § 84 cmt. c (1982) ("Giving claim preclusive effect to an arbitration award does not necessarily imply that such an award should also be given issue preclusive effects. It is coherent to treat an arbitration proceeding as wholly self-contained, conclusive as to the claims represented in the award but inoperative beyond them."). It therefore did not intrude on the authority of "the bankruptcy court to centralize all disputes concerning property of the debtor's estate so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas." *In re U.S. Lines, Inc.*, 197 F.3d 631, 640 (2d Cir. 1999), *cert. denied*, 529 U.S. 1038 (2000). The arbitrator's actions did not "dissipate estate assets or interfere with the trustee's orderly administration of the estate." *In re Fogarty*, 39 F.4th at 71 (quoting *Picard*, 762 F.3d at 207). The arbitrator did not "decide whether claims belonging to a debtor are property of the bankruptcy estate." Dkt. No. 38 at 2. The issues the bankruptcy court will have to decide were not before the arbitral proceedings nor was it necessary for the arbitrator to decide whether the election by Eletson that the Preferred Shares go to the Nominees rather than to the Company effected a fraud on the creditors of Holdings. Those issues therefore remain open for the bankruptcy court to decide.

See Global Gaming Phillipines, 2023 WL 5935640, at *3–4 (stating standards for application of issue preclusion to arbitral findings); *see also* Restatement (Second) of Judgments §§ 27, 84 (1982).

Thus, by confirming the arbitral award, the Court also will not intrude on the bankruptcy court's exclusive authority to decide what is property of the estate. *See Universal Well Servs., Inc. v. Avoco Nat. Gas Storage*, 222 B.R. 26, 30 (W.D.N.Y. 1998) ("[T]he decision as to what is and is not 'property of the estate' lies within the exclusive jurisdiction of the bankruptcy court."). As Eletson itself has emphasized, the Court's role on a petition to confirm an arbitral award is "very limited." Dkt. No. 54 at 5 (quoting *LiveWire Ergogenics, Inc. v. JS Barkats PLLC*, 645 F. Supp. 3d 290, 297 (S.D.N.Y. 2022)). The confirmation of an arbitration award "ordinarily is 'a summary proceedings that merely makes what is already a final arbitration award a judgment of the court.'" *Citigroup, Inc. v. Abu Dhabi Inv. Auth.*, 776 F.3d 126, 132 (2d Cir. 2015) (quoting *D.H. Blair & Co.*, 462 F.3d at 110); Jay E. Grenig, Int'l Com. Arb. § 13:1 (Hilary Shroyer ed., 2023) ("Once a court has confirmed an award and reduced it to a judgment, a party may then seek a court in any Convention country with jurisdiction over the assets of the losing party that can be executed on to satisfy a money judgment. Finding such a court, the prevailing party may take the award that has been confirmed and reduced to a judgment, and petition the new court for recognition and enforcement."). The Court does not review the merits of the dispute and must "confirm an arbitration award unless it concludes that one of the enumerated grounds for refusing to enforce the award is present." *Citigroup*, 776 F.3d at 132 n.4 (internal citations and quotation marks omitted). Eletson has stated that it "intends to return to the Bankruptcy Court following this Court's ruling on confirmation and will prove then that the Arbitral Award does not even arguably involve property belonging to Holdings's estate." Dkt. No. 33 at 3; *see also*

Dkt. No. 35 at 3 ("Eletson intends to return to the Bankruptcy Court following this Court's confirmation ruling, to address enforcement issues."). It is in that forum, in the first instance, that the Court can address the timing of the election by Eletson that the Preferred Interests should go to the Nominees and whether the Preferred Interests should be considered to be property of the estate or should be clawed back or avoided.[26] *See Stone Container Corp. v. Tradeway Int'l Corp.*, 1994 WL 184661, at *3 (S.D.N.Y. May 12, 1994) ("[T]he issue of preferential transfers is properly an issue for the Bankruptcy Court to consider. Therefore, the Court [will not] rule on the alleged transfers.").

For similar reasons, the prosecution of the violation of the Status Quo Injunction also did not violate the automatic stay. That claim was leveled by Eletson against Levona. *See Koch v. Preuss*, 2020 WL 1304084, at *3 (S.D.N.Y. Mar. 18, 2020). It did not intrude upon the assets of the bankruptcy estate. *See Martin-Trigona*, 892 F.2d at 577. It could be argued that Eletson—by asking at the last minute that damages be paid to the Company and not to itself—transferred a claim that belonged to the estate or an entity owned by the estate to a non-debtor and that the damages awarded to the Company should instead be for the benefit of the creditors of Holdings, but the Court need not now address that issue (if it ever needs to be addressed). The arbitrator had before him no issue with respect to the rights as between Holdings and the Company, and no order this Court will issue confirming the award thus could affect the rights as between Holdings and the Company.

[26] *Marquis Yachets v. Allied Marine Grp., Inc. (North)*, 2010 WL 1380137 (D. Minn. Mar. 31, 2010), upon which Levona relies, is distinguishable. In that case, the court held that an arbitration panel exceeded its powers by deciding rather than staying claims in an arbitration brought against the debtor, not by the debtor, but nonetheless declined to modify the arbitration award because the panel was acting within its powers by continuing the arbitration award on claims to which the stay did not apply.

Finally, the Award of the Preferred Interests to the Nominees and damages to the Company for violation of the Status Quo Injunction does not violate the Lift Stay Order or the automatic stay. First, with respect to the Lift Stay Order, that order, by its terms, does not purport to "expand the scope" of the automatic stay. *Picard*, 762 F.3d at 207. Its language is permissive, not restrictive. The Bankruptcy Court stated:

> The automatic stay under section 362(a) of the Bankruptcy Code is hereby modified with respect to the Arbitration solely to the extent necessary and for the sole purpose of permitting a trial, any related pre-trial proceedings (including any remaining discovery), any related post-trial proceedings or briefing, and a final determination or award to be made by the arbitrator, including any appeals, with respect to the claims currently pending in the Arbitration.

Dkt. No. 67-35 at 4. The Lift Stay Order does not restrict Eletson from pursuing any action beyond the ambit of the automatic stay. In any event, the word "claims" is capacious. It refers to "[a] demand for money, property, or a legal remedy to which one asserts a right." *Claim*, Black's Law Dictionary (10th ed. 2014); *see In re Bridge Const. Servs. of Fla., Inc.*, 140 F. Supp. 3d 324, 334 n.5 (S.D.N.Y. 2015) (same); *Am. Ins. Ass'n v. Del. Dep't of Ins.*, 2008 WL 44322, at *4 (Del. Sup. Ct. Jan. 2, 2008) (same); *see also Goldstein v. N.J. Tr. Co.*, 39 F.R.D. 363, 366 (S.D.N.Y. 1966) (defining the word "claim" as it appears in Federal Rule of Civil Procedure 12(b)(6) to mean "the aggregate of operative facts which give rise to aa right enforceable in courts").

In sum, neither the arbitration nor the present proceeding infringed upon the automatic stay or Lift Stay Order.

D. Award of Fees Incurred in the Bankruptcy Case and the Bondholder Litigation

Next, Respondent challenges the arbitrator's award of damages for violations of the Status Quo Injunction. Dkt. No. 50 at 27–31. The arbitrator identified what he characterized as three intentional violations of the Status Quo Injunction that collectively caused quantifiable

harm: (1) Pach Shemen's purchase of a controlling interest of the outstanding bonds issued by Holdings—amounting to $183,851,546 in face value—for $2,000,000 on January 4, 2023; (2) Pach Shemen's directing of the trustee to commence litigation against Holdings on January 11, 2023, after Pach Shemen purchased the bonds; and (3) Pach Shemen's directing of the commencement of the involuntary bankruptcy petition against Holdings on March 7, 2023, again after purchasing the bonds. Dkt. No. 67-58 at 60; *see also id.* at 98–99 (finding that Levona violated the Status Quo Injunction by "[d]irecting and/or causing Levona's affiliates to purchase a controlling position in securities of . . . Holdings in January 2023 for the purpose of wrongfully commencing and then actually causing the commencement of litigation against . . . Holdings and the filing an involuntary bankruptcy petition against . . . Holdings"). The arbitrator did not find that the acquisition of the bonds by Pach Shemen alone would have violated the Status Quo Injunction, nor is the basis for any such finding apparent from the record. Rather, the arbitrator concluded that through these actions together, "the Levona-related entities were looking to either strip this arbitration of its jurisdiction or hedge against a potential loss in this arbitration." *Id.* at 61.[27] The arbitrator recognized that Pach Shemen's actions "technically" did not effect a transfer or attempted transfer or sale of the assets of the Company or of the assets in dispute in the arbitration, but he concluded that the "overall strategy was intended to disrupt the status quo and find another path to obtain the 'assets of [the Company] . . . or assets in dispute in this arbitration.'" *Id.* He also recognized that Pach Shemen was not bound by the Status Quo Injunction but he found that "Pach Shemen is the alter ego of Levona" and certain of the

[27] The arbitrator did not identify what would be wrongful about Levona hedging against a potential loss in the arbitration. Nor did the arbitrator award any compensatory damages arising out of the purchase of the bonds themselves—the compensatory award for breach of the Status Quo Injunction was based on fees and costs incurred during the bondholder litigation and the involuntary bankruptcy proceeding.

individuals who acted on behalf of Pach Shemen also were bound by the Status Quo Injunction. *Id.*

Consequently, the arbitrator awarded Petitioners $3,007,266.20 in fees and costs incurred by Petitioners in connection with the bondholder litigation against Holdings and the involuntary bankruptcy of Holdings that the arbitrator concluded Pach Shemen directed to be commenced in violation of the Status Quo Injunction, to be paid jointly and severally by Levona, Murchinson, and Pach Shemen to the entities or individuals who paid those costs and fees. Dkt. No. 67-58 at 91, 100. The arbitrator concluded that the attorneys' fees were damages "to compensate for the intentional violations by Levona, through its alter ego, Pach Shemen, of the Status Quo Injunction . . . ." *Id.* at 92. The arbitrator also based his award of punitive damages in the amount of $43,455,122.21, equal to the amount of compensatory damages, in part on what he concluded were violations of the Status Quo Injunction. *Id.* at 74.

The arbitrator lacked the power to enjoin Pach Shemen from filing the involuntary bankruptcy petition and the bondholder litigation or Levona from assisting in filing those actions and his award of damages for those actions thus exceeded his authority under the LLCA and under the law. *See Jock*, 942 F.3d at 622 (an arbitrator exceeds her authority by "considering issues beyond those the parties have submitted for her consideration [or] reaching issues clearly prohibited by law or by the terms of the parties' agreement"). The arbitration clause at issue, though broad, was not unlimited. It bound only the parties to the LLCA and applied only to disputes, claims or controversies "arising out of or relating to [the LLCA] or the breach, termination, enforcement, interpretation or validity thereof." Dkt. No. 67-2 § 12.14(b). It empowered the arbitrator to grant injunctive or other forms of equitable relief but only "(i) to preserve such party's rights pending a final resolution on the merits or (ii) that prevails in any

such arbitration." *Id.* § 12.14(c). Rule 24(e) of the JAMS Rules, to which the parties consented, gives the arbitrator the authority to grant "whatever interim measures are deemed necessary, including injunctive relief and measures for the protection or conservation of property and disposition of disposable goods." Dkt. No. 67-3 at 15. The JAMS Comprehensive Arbitration Rules and Procedures, in Rule 29, give the arbitrator the power to "order appropriate sanctions for failure of a Party to comply with its obligations under any of these Rules or with an order of the Arbitrator." *Id.* at 17.[28] As long as it is consistent with the arbitral agreement. an arbitrator has the authority to grant "interim relief in order to maintain the status quo." Domke on Commercial Arbitration § 35:4 (citing *Next Step Med. Co. v. Johnson & Johnson Int'l*, 619 F.3d 67 (1st Cir. 2010); *Charles Constr. Co. v. Derderian*, 586 N.E.2d 992 (Mass. 1992)). An arbitrator also "possesses the inherent authority to preserve the integrity of the arbitration process to which the parties have agreed." *On Time Staffing, LLC v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 784 F. Supp. 2d 450, 455 (S.D.N.Y. 2011).

The arbitrator's powers to issue injunctions, however, also are not unlimited. As a general matter, only under limited circumstances may even a court prevent a party from litigating a dispute in another court and thus intrude upon the second court's jurisdiction. "[T]he Supreme Court has recognized that '[t]he right of access to the courts is . . . one aspect of the right to petition' the government for a redress of grievances secured by the First Amendment to the Constitution." *Sherman v. Fivesky, LLC*, 2020 WL 5105164, at *5 (S.D.N.Y. Aug. 31, 2020) (quoting *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972)). Accordingly, federal courts themselves have circumscribed power to enjoin a party from availing

[28] Those sanctions may include assessment of any "costs occasioned by the actionable conduct, including reasonable attorneys' fees." Dkt. No. 67-3 at 17.

itself of its right to seek judicial relief. In particular, a federal court has the power to "protect its ability to carry out its constitutional functions against the threat of onerous, multiplicitious, and baseless litigation," by enjoining a litigant's right to file actions in federal court. *Abdullah v. Gatto*, 773 F.2d 487, 488 (2d Cir. 1985) (per curiam); *see In re Martin-Trigona*, 737 F.2d 1254, 1262–63 (2d Cir. 1984) (affirming injunction against filings in the District of Connecticut and requiring that Martin-Trigona inform other federal courts of the injunction and obtain leave of court but vacating injunction to the extent that it prevented Martin-Trigona from filing actions in state court). In addition, under the first-filed rule, "a district court 'may enjoin the suitor in [a] more recently commenced case from taking any further action in the prosecution of that case' if the claims presented in the second action should have been interposed as compulsory counterclaims to the claims in the suit pending before it." *Comput. Assocs. Int'l., Inc. v. Altai, Inc.*, 893 F.2d 26, 28–29 (2d Cir. 1990) (quoting *Nat'l Equip. Rental, Ltd. v. Fowler*, 287 F.2d 43, 45 (2d Cir. 1961)); *see Tropic Techs., Inc. v. Vendr, Inc.*, 2023 WL 2535215, at *5 (S.D.N.Y. Mar. 15, 2023).

But while courts do have the authority "to enjoin foreign suits by persons subject to their jurisdiction," that authority may only "be used sparingly and . . . only with care and great restraint." *China Trade & Dev. Corp. v. M.V. Choong Yong*, 837 F.2d 33, 35–36 (2d Cir. 1987) (internal citations and quotation marks omitted). It may only be used when (1) the parties are the same in both matters, and (2) resolution of the case before the enjoining court is dispositive of the matter to be enjoined. *Id.*; *see LAIF X SPRL v. Axtel, S.A. de C.V.*, 390 F.3d 194, 199 (2d Cir. 2004); *Paramedics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 652 (2d Cir. 2004). Even then, a court may not enjoin a party from seeking relief from another court without also weighing "(1) the threat to the enjoining court's jurisdiction posed by

the foreign action; (2) the potential frustration of strong public policies in the enjoining forum; (3) the vexatiousness of the foreign litigation; (4) the possibility of delay, inconvenience, expense, inconsistency, or a race to judgment; and (5) other equitable considerations." *Eastman Kodak Co. v. Asia Optical Co., Inc.*, 118 F. Supp. 3d 581, 586 (S.D.N.Y. 2015); *see also China Trade*, 837 F.2d at 35. If the foreign proceeding poses no threat to the enjoining court's jurisdiction and will not frustrate the strong public policies of the enjoining forum or otherwise undermine the integrity of proceeding before the enjoining forum, no injunction is appropriate. "[O]ur legal system generally relies on principles of *stare decisis* and comity among courts to mitigate the sometimes substantial costs of similar litigation" involving different parties. *Smith v. Bayer Corp.*, 564 U.S. 299, 317 (2011).[29]

Of particular relevance here, a court has the authority to enjoin a party to an international arbitration agreement from initiating or maintaining litigation before another court only if the arbitration agreement is enforceable, the party being enjoined is bound by the arbitration agreement, the claims to be enjoined are within the scope of the arbitration agreement, and issuance of the injunction is appropriate upon consideration of a number of factors, including which court has the greater interest in ruling on the enforceability of the arbitration agreement. Restatement (Third) of the U.S. Law of Int'l Com. Arb. § 2.29 (Am. L. Inst., Tentative Draft No. 2, 2012); *cf. Amaprop Ltd. v. Indiabulls Fin. Servs. Ltd*, 2010 WL 1050988 (S.D.N.Y. Mar. 23, 2010) (weighing *China Trade* factors to determine whether to award an anti-suit injunction against litigation in India in favor of arbitration); *Paramedics Electromedicina Comercial, Ltda.*, 369 F.3d at 680–81 (weighing *China Trade* factors in reviewing district court's anti-suit

[29] *Smith v. Bayer* itself involved suits by different plaintiffs, each members of a putative (non-certified) class. The proposition it relied upon, however, is generally applicable to suits involving different parties or different sets of issues, and not just different plaintiffs.

injunction against litigation in Brazil in aid of arbitration); *T-Jat Sys. 2006 Ltd. v. Amdocs Software Sys. Ltd.*, 2013 WL 6409476, at *4 (S.D.N.Y. 2013) (weighing *China Trade* factors and enjoining respondents and their officers and representatives from bringing action in Israel that would interfere with New York arbitral proceedings); *Stolt Tankers BV v. Allianz Seguros, S.A.*, 2011 WL 2436662, at *5 (S.D.N.Y. June 16, 2011) (weighing *China Trade* factors and enjoining respondents from pursuing action in Brazil in light of agreement to arbitrate in New York). *But see Telenor Mobile Commc'ns AS v. Storm LLC*, 524 F. Supp. 2d 332, 363–64 (S.D.N.Y. 2007) (Lynch, J.), *aff'd on other grounds*, 584 F.3d 396 (2d Cir. 2009) (holding that where an arbitral body itself enters an anti-suit injunction "the proper inquiry is whether the parties agreed to give the arbitrators the power to enter such an injunction" and that when the parties give broad authority to the arbitrator "the applicable test for arbitral jurisdiction is not whether the preconditions of *China Trade* are satisfied, but whether the arbitral award 'touch[es] matters' within the contract" (quoting *ACE Cap. Re Overseas Ltd. v. Cent. United Life Ins. Co.*, 307 F.3d 24, 26–28 (2d Cir. 2002))).

Petitioners request, however, that this Court hold that they could obtain relief from a private arbitrator—in aid of the arbitration—would far exceed the limited relief that a court would be authorized to grant Petitioners. On Petitioners' argument, the arbitrator had the authority to enjoin the filing of lawsuits by persons who were not parties to the arbitration, to vindicate rights that were not subject to the arbitration, in proceedings that would not adjudicate issues presented in the arbitration, and that would in no way interfere with the integrity of the arbitration or prevent the arbitrator from issuing his award. The Court concludes that the arbitrator had no such authority.

Starting with the involuntary bankruptcy petition, the arbitrator's powers did not extend to enjoining the filing of an involuntary petition even by Levona, much less by Pach Shemen, a party who was not before the arbitral panel. Under the Bankruptcy Code, both the debtor and a creditor have a near absolute right to file a petition for relief. *United States v. Royal Bus. Funds Corp.*, 724 F.2d 12, 15 (2d Cir. 1983) (citing the general rule "that a debtor may not agree to waive the right to file a bankruptcy petition"); *In re Project Restore, LLC*, 2022 WL 6233552, at *6 (Bankr. M.D. Tenn. Oct. 7, 2022) ("From the Court's standpoint, a creditor cannot contract away its right as a petitioner in an involuntary case any more than a debtor can contract away its right to file a voluntary bankruptcy."). The reasons why a debtor cannot be understood, in a bilateral agreement, to have contracted away its right to file a voluntary bankruptcy petition are self-evident and readily understood. The right to file a bankruptcy petition exists not purely to protect the personal interests of the debtor but also to protect the interests of the community of all of the creditors and the economy generally against the destructive race to the courthouse that would ensue if a single forum were not permitted to adjudicate, all at once, the interests of all with a claim against the debtor. *See Sherwood Partners, Inc. v. Lycos, Inc.*, 394 F.3d 1198, 1203–04 (9th Cir. 2005) ("This is a unique contribution of the Bankruptcy Code that makes bankruptcy different from a collection of actions by individual creditors. In a world of individual actions, each creditor knows that if he waits too long, the debtor's assets will have been exhausted by the demands of the quicker creditors and he will recover nothing. The creditors race to the courthouse, all demanding immediate payment of their entire debt. Like piranhas, they make short work of the debtor, who might have survived to pay off more of his debts with a little bit of reorganization—or at least might have more equitably fed the slower piranhas."); *Israel-British Bank (London) v. Fed. Deposit Ins. Corp.*, 536 F.2d 509, 513 (2d Cir.), *cert.*

denied, 429 U.S. 978 (1976) ("The theme of the Bankruptcy Act is equality of distribution of assets among creditors, and correlatively avoidance of preference to some. The road to equity is not a race course for the swiftest." (internal citations omitted)). For those reasons, the Second Circuit has held, as discussed further below, that the right to file a bankruptcy petition may be waived only in limited circumstances, generally in those circumstances where—as in the case of a receivership—an alternative forum exists that would "accomplish[] what a bankruptcy would[:]" the settlement of all of the claims against a putative debtor. *See S.E.C. v. Byers*, 609 F.3d 87, 92 (2d Cir. 2010); *see also Royal Bus. Funds Corp.*, 724 F.2d at 12 (applying the same rule in context of a consensual court-supervised federal receivership).

The same principles apply in the case of an involuntary petition. The Code gives every creditor the right to file an involuntary bankruptcy petition under Chapter 7 or 11 so long as it is the holder of a claim "that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount," and so long as it is either joined by two other creditors meeting the same criteria and all together holding at least $18,600 in claims or, if there are fewer than twelve creditors, so long as it holds more than $18,600 in claims. 11 U.S.C. § 303(b). The provision ensures that creditors—as well as the debtor—can prevent the destructive race to the courthouse and ensure the orderly disposition of the debtor's assets. "Involuntary bankruptcy petitions help ensure the orderly and fair distribution of an estate by giving creditors an alternative to watching nervously as assets are depleted, either by the debtor or by rival creditors who beat them to the courthouse." *In re Murray*, 900 F.3d 53, 59 (2d Cir. 2018); *see also In re Miles*, 294 B.R. 756, 760 (B.A.P. 9th Cir. 2003) ("A key justification for involuntary cases is as a creditors' remedy that enables creditors who lack the muscle or the luck to extract preferences or unequal transfers from distressed debtors to achieve equitable treatment by invoking the protections inherent in the

trustee's avoiding powers consistent with the principle of ratable recovery for creditors.").[30] Although the Code recognizes that a vexatious creditor or a creditor unknowledgeable about the debtor's financial condition could interfere with the debtor's operations, it balances that risk against the risk that the debtor will not place itself into bankruptcy, creating such balance by permitting the debtor to operate until the court orders otherwise, by allowing the court to require the petitioner to file a bond to indemnify the debtor for costs should the petition be dismissed, and by providing for costs and damages in the event that the petition is dismissed. As Judge Lifland once put it, "[w]hile no doubt an improvidently filed involuntary petition (i.e.: by one without a valid claim) can wreak havoc on an innocent debtor, this potential harm must be juxtaposed with the need to ensure that earnest creditors promptly receive all of the rights and protections afforded by the bankruptcy laws, lest the assets of the estate be squandered and secreted away by a financially troubled or dishonest debtor." *Matter of B.D. Int'l Disc. Corp.*, 15 B.R. 755, 759 (Bankr. S.D.N.Y. 1981). Section 303(i) authorizes the court—if an involuntary petition is dismissed—to grant the debtor judgment against the petitioners for costs or a reasonable attorneys' fees and, if the petition has been filed in bad faith, for compensatory or punitive damages. 11 U.S.C. § 303(i); *see also In re TPG Troy, LLC*, 793 F.3d 228, 235 (2d Cir. 2015) ("When an involuntary petition is dismissed, 'there is a presumption that costs and attorney's fees will be awarded to the alleged debtor.'" (quoting *In re Mountain Diaries*, 372

[30] Originally, under United States law, only creditors, and not the debtor, could file a bankruptcy petition. *See In re Marshall*, 721 F.3d 1032, 1058–59 (9th Cir. 2013) ("Historically, bankruptcy laws have not been conceived in the United States or England for the protection of debtors, whether honest or dishonest. Bankruptcy laws were enacted principally for the benefit of trade and for the protection of creditors, to give them more powers acting in concert to collect debts than they possessed individually. . . . The 1841 Act was the first United States law to authorize a debtor to file a voluntary bankruptcy petition. Neither the 1800 Act nor the English predecessors permitted a voluntary bankruptcy filing.").

B.R. 623, 637 (Bankr. S.D.N.Y. 2007))). "[B]ad faith is not a prerequisite to an award of costs and attorney's fees under § 303(i)(1)." *In re Bayshore Wire Prods. Corp.*, 209 F.3d 100, 105 (2d Cir.2000). The cost and damages provisions thus provide a potent deterrent against anyone who would file a possibly frivolous petition. *In re John Richards Homes Bldg. Co. L.L.C.*, 439 F.3d 248 (6th Cir. 2006) (affirming award of $4,100,000 in compensatory damages and $2,000,000 in punitive damages). But if a petition is not dismissed, the debtor has no right to relief under these provisions. The creditors are exercising a right given to them by Congress.

It follows that two parties cannot—by contract—agree to delegate to an arbitrator the power to decide whether either can file a bankruptcy petition, voluntary or involuntary. Although an arbitrator's powers are vast under the FAA and the New York Convention, they do have limits. "[T]he Arbitration Act's mandate may be overridden by a contrary congressional command." *Shearson/Am. Exp., Inc. v. McMahon*, 482 U.S. 220, 226 (1987); *see also In re Belton v. GE Cap. Retail Bank*, 961 F.3d 612, 615 (2d Cir. 2020), *cert. denied*, 141 S. Ct. 1513 (2021) ("The Arbitration Act requires courts to strictly enforce arbitration agreements. But like any statutory directive, that mandate may be overridden by contrary congressional intent."). The Second Circuit has recently reiterated that congressional intent to override the FAA's mandate to strictly enforce arbitration agreements "may be deduced from 'the statute's text or legislative history, or from an inherent conflict between arbitration and the statute's underlying purposes.'" *In re Belton*, 961 F.3d at 615 (quoting *McMahon*, 482 U.S. at 227). "Disputes that involve both the Bankruptcy Code and the [FAA] often present conflicts of 'near polar extremes: bankruptcy policy exerts an inexorable pull towards centralization while arbitration policy advocates a decentralized approach toward dispute resolution.'" *MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104, 108 (2d Cir. 2006) (quoting *In re U.S. Lines, Inc.*, 197 F.3d at 640). The Second Circuit has

stated that "[t]he Arbitration Act as interpreted by the Supreme Court dictates that an arbitration clause should be enforced 'unless [doing so] would seriously jeopardize the objectives of the Code.'" *In re U.S. Lines, Inc.*, 197 F.3d at 640 (quoting *Hays & Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 885 F.2d 1149, 1161 (3d Cir. 1989)). It follows that when enforcement of an arbitration clause would seriously jeopardize the objectives of the Code an arbitration clause should not be enforced. "In order to determine whether enforcement of an arbitration agreement would present an inherent conflict with the Bankruptcy Code, we must engage in a

> particularized inquiry into the nature of the claim and the facts of the specific bankruptcy. The objectives of the Bankruptcy Code relevant to this inquiry include the goal of centralized resolution of purely bankruptcy issues, the need to protect creditors and reorganizing debtors from piecemeal litigation, and the undisputed power of a bankruptcy court to enforce its own orders."

In re Anderson, 884 F.3d at 389 (quoting *MBNA Am. Bank, N.A.*, 436 F.3d at 108 (citation and internal quotation marks omitted)). "If a severe conflict is found, then the court can properly conclude that, with respect to the particular Code provision involved, Congress intended to override the [FAA's] general policy favoring the enforcement of arbitration agreements." *MBNA Am. Bank, N.A.*, 436 F.3d at 108; *see also In re Project Restore*, 2022 WL 6233552, at *4 (holding that arbitration clause is overridden when Congress intended the FAA to yield to a contrary congressional command, "which may be deduced from (i) the text of the statute, (ii) the statute's legislative history, or (iii) an inherent conflict between arbitration and the statute's underlying purposes"); *In re Patriot Solar Grp., LLC*, 569 B.R. 451 (Bankr. W.D. Mich. 2017) (denying motion for relief from the automatic stay so that a contractual counterparty could pursue arbitral proceeding against debtor pursuant to arbitration provision in the parties' contract).

Courts have considered the preemptive force of Section 303 of the Bankruptcy Code in two related contexts. Neither is controlling but both are instructive. In *Project Restore*, the

question was whether an agreement that the parties arbitrate a dispute as a prerequisite to an involuntary petition could thwart the rights of a creditor to file a petition under Section 303. *In re Project Restore*, 2022 WL 6233552, at *1–2. The petitioning creditor had signed an arbitration agreement that any dispute it had with the debtor would be resolved through arbitration. *Id*. The debtor argued that the involuntary petition should be dismissed because, in determining whether to allow an order for relief, the court would have to decide arbitrable issues. *Id.* at *1. As the court characterized it, the case involved the question whether the creditors' rights to file a bankruptcy petition trumped its obligation under the arbitration agreement, as made enforceable by the FAA, to present the dispute in the first instance to the arbitral tribunal. *Id.* at *4–5. The court held that there was "an inherent conflict between the underlying purposes of the Bankruptcy Code and arbitration, at least to the extent that arbitration would preclude a creditor's right to pursue an involuntary bankruptcy." *Id.* at *4. Thus, in the court's view, the issues presented by the petition were ones given exclusively to the bankruptcy courts by the Bankruptcy Code and over which the arbitrator had no authority. *Id.* at *5. The court highlighted first that bankruptcy courts had "exclusive jurisdiction over bankruptcy cases," second that "the bankruptcy court [was] the sole court with which a petition, whether voluntary or involuntary, [could] be filed to commence a bankruptcy proceeding" and "[a] bankruptcy case could not be commenced by filing a petition for bankruptcy with an arbitrator," and third that only the bankruptcy court and not the arbitrator could determine whether the petition satisfied the requirements of Section 303 and enter an order for relief. *Id.* at *4–5. The court also noted that under the debtor's approach, "a petitioning creditor with a disputed claim subject to an arbitration clause would have to have an arbitration award in order to qualify as a petitioning creditor, regarding of whether the dispute was bona fide." *Id.* at *5. The court concluded that "a

creditor cannot contract away its right as a petitioner in an involuntary case any more than a debtor can contract away its right to file a voluntary bankruptcy." *Id.* at *6. In sum, that court held that "creditors cannot prospectively delegate rights under the Bankruptcy Code to an arbitrator." *Id*.

The question in *In re Miles* was whether state law tort causes of action for damages predicated upon the filing of an involuntary bankruptcy petition were completely preempted by the Bankruptcy Code and whether a claim for damages arising from the filing of such a petition could be prosecuted other than through Section 303 of the Code. *In re Miles*, 430 F.3d 1083 (9th Cir. 2005). The plaintiffs in that case were relatives of the debtors who alleged that several involuntary bankruptcy petitions filed by the creditors-defendants, which were subsequently dismissed, gave rise to causes of action under the state law torts of negligence, defamation, false light, abuse of process, intentional and negligent infliction of emotional distress, and negligent misrepresentation. *Id.* at 1086. The creditors-defendants removed the case which had been filed in state court. *Id.* at 1087. The Bankruptcy Appellate Panel of the Ninth Circuit held that the case was properly removed on grounds that the causes of action asserted by the plaintiffs were completely preempted by the Bankruptcy Code, and that the plaintiffs' claims were without merit because they did not satisfy Section 303. *Id.* at 1087. The Ninth Circuit affirmed. As relevant here, the Ninth Circuit held that "Congress intended 11 U.S.C. § 303(i) to provide the exclusive basis for awarding damages predicated upon the filing of an involuntary bankruptcy petition," *id.* at 1089, and that "[p]ermitting state courts to decide whether the filing of an involuntary bankruptcy petition was appropriate would subvert the exclusive jurisdiction of the federal courts and undermine uniformity in bankruptcy law," *id.* at 1090. The court reasoned that "Congress created involuntary bankruptcy proceedings to enable creditors who are unable to extract

preferences or unequal transfers from distressed debtors to achieve equitable treatment." *Id.*; *see also In re Miles*, 294 B.R. at 760. The court also noted that Section 303(i)'s remedial scheme was "comprehensive" and "addresse[d] the full range of remedies, from costs and attorneys' fees for dismissed involuntary petitions to compensatory and punitive damages for involuntary petitions filed in bad faith," and that Congress's authorization of certain sanctions for petitions filed in bad faith "suggest[ed] that Congress rejected other penalties." *In re Miles*, 430 F.3d at 1090. The court further noted that the Constitution itself recognized the importance of uniformity in the administration of the bankruptcy laws, providing that Congress had the power "to establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." *Id.* (quoting U.S. Const. Art. I, § 8, cl. 4). The court held, based on "[t]he 'highly complex' nature of the Bankruptcy Code and 'the unique, historical, and even constitutional need for uniformity in the administration of bankruptcy laws,'" that Section 303(i) provides the exclusive cause of action for damages predicated upon the filing of an involuntary bankruptcy petition and that state courts had no power to grant such relief. *Id.* at 1090–91 (quoting *MSR Expl., Ltd. v. Meridian Oil, Inc.*, 74 F.3d 910, 914–15 (9th Cir. 1996) (internal citations omitted)). "Allowing state court remedies for wrongful filings may well interfere with the filings of involuntary bankruptcy petitions by creditors and with other necessary actions that they, and others, must or might take within the confines of the bankruptcy process." *Id.* at 1090. The court concluded: "Permitting state courts to decide whether the filing of an involuntary bankruptcy petition was appropriate would subvert the exclusive jurisdiction of the federal courts and undermine uniformity in bankruptcy law by allowing state courts to create their own standards as to when a creditor may properly file an involuntary petition." *Id.*

Outside the arbitration context, the Second Circuit itself has limited the circumstances under which a court may issue an anti-litigation injunction barring bankruptcy filings as part of their broad equitable powers, cautioning that such power is "to be exercised cautiously." *Byers*, 609 F.3d at 91. In *Byers*, it approved such an injunction in the case of a Securities and Exchange Commission ("SEC") receivership only after concluding that the receivership would "accomplish[d] what a bankruptcy would."[31] *Id.* at 92. And, in *Royal Business Funds*, the Second Circuit affirmed an anti-suit injunction where the debtor was subject to a federal receivership (with the Small Business Administration ("SBA") serving as receiver pursuant to federal statute) to which it had consented and which had the authority to address the claims by all of the debtor's creditors. 724 F.2d at 16. No rights of creditors were impaired. In that instance, "[t]he bankruptcy petition, which was filed by the debtor rather than by third-party creditors, [would] disrupt the receiver's attempts to improve the company's fortunes." *Id.* The court concluded that "no public or private interest [wa]s served by allowing [the company] to repudiate the arrangements it made with the SBA." *Id.*

In re Miles, *Project Restore*, *Byers*, and *Royal Business Funds* strongly suggest that Eletson and Levona could not have—by private agreement to resolve disputes through arbitration—contracted away the rights of Levona, or an affiliate of Levona, to file an

[31] "A primary purpose of appointing a receiver is to conserve the existing estate." *Esbitt v. Dutch-Am. Mercantile Corp.*, 335 F.2d 141, 143 (2d Cir.1964). "Although neither the Securities Act of 1933 nor the Securities Exchange Act of 1934 explicitly vests district courts with the power to appoint trustees or receivers, courts have consistently held that such power exists where necessary to prevent the dissipation of a defendant's assets pending further action by the court." *S.E.C. v. Am. Bd. of Trade, Inc.*, 830 F.2d 431, 436 (2d Cir. 1987), *cert. denied sub nom.*, 485 U.S. 938 (1988) (internal citation omitted). The Second Circuit has held that, where the SEC has alleged violations of the Securities Exchange Act, "the appointment of a trustee to help preserve the status quo while the various transactions were unraveled was necessary to obtain an accurate picture of what transpired." *Sec. & Exch. Comm'n v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1105 (2d Cir.1972), *abrogated on other grounds by Liu v. S.E.C.*, 140 S. Ct. 1936 (2020).

involuntary bankruptcy petition, and that the arbitral panel lacked the authority to enjoin Pach Shemen from filing such a petition. A "severe conflict" would be presented by any such provision. If, as the court held in *Project Restore*, a "petitioning creditor cannot contract away its right as a petitioner in an involuntary case" and cannot be forced to get an arbitrator's approval before filing an involuntary petition because "creditors cannot prospectively delegate rights under the Bankruptcy Code to an arbitrator," 2022 WL 6233552, at *16, it follows that an arbitrator in a case where the petitioning creditor has not contracted away its rights to file an involuntary petition cannot arrogate to himself the power to determine whether an involuntary petition may be filed or not. The assumption of such a power by the arbitrator would undermine a core proceeding committed to the exclusive jurisdiction of the bankruptcy court. And if, as the Ninth Circuit held in *Miles*, the exercise of jurisdiction by a state court to impose financial sanctions upon petitioning creditors based on "their own standards as to when a creditor may properly file an involuntary petition" would first, subvert the exclusive jurisdiction of the federal courts to determine whether a petition was properly filed or not, second, defeat the federal policy that "the potential costs of filing an involuntary bankruptcy petition should not be governed by state law," *In re Miles*, 430 F.3d at 1090, and third, undermine the uniformity of the Bankruptcy Code, so too here the exercise of jurisdiction by an arbitrator to determine *ex ante* whether a bankruptcy petition may be filed, and then to impose *ex post* financial sanctions when he has determined that the petition should not have been filed, would also conflict with the Bankruptcy Code, federal policy, and the uniformity intended to be achieved by the Constitution. In short, as the court stated in *Miles*, if Eletson felt aggrieved by the filing of the involuntary petition, it had "a comprehensive scheme of remedies available in the federal courts." *Id*. It had no right under the arbitration agreement and under the law to obtain relief from the arbitral tribunal.

The arrogation by the arbitrator of the power to determine whether a party could join in an involuntary petition clearly conflicts with the Code and its underlying purposes. Section 303 contains a carefully designed and balanced structure for the filing of an involuntary petition based on the number, type, and aggregate nominal significance of creditors joining in the petition. If there are fewer than twelve holders of claims that are not contingent as to liability or the subject of a bona fide dispute as to liability or amount (excluding certain specified insiders), an involuntary petition can be filed by a single holder of at least $18,600 (originally "$10,000," adjusted effective April 1, 2022) of such claims. 11 U.S.C. § 303. If there are twelve or more such holders (excluding certain specified insiders), the petition must be filed by three or more of such entities. *Id.* The Code does so in order to permit creditors, as a class, to preserve their interests from the debtor's dissipation of its assets and to ensure that they have a forum in which the interests of all of the creditors are protected, while at the same time protecting against the risk of a premature or vexatious filing that would injure both the debtor and its creditors. The arbitrator's exercise of authority, if recognized by this Court, would disrupt that balance and undermine the purposes of Section 303. If accepted, a canny debtor—intent on defeating an involuntary petition—could undermine the rights of all of the creditors by agreeing with some of them that they would not under any circumstances join in an involuntary petition without first going through the arbitral hoop. A potential involuntary creditor, in those circumstances, might find no one who could join the petition—not because there were no qualified creditors and not because the debtor was not in distress, but because the other creditors had years earlier signed an arbitration agreement. In a world where arbitration agreements are prolific, it is not difficult to imagine a circumstance in which a putative debtor could virtually immunize itself from the risk of any involuntary bankruptcy by the mere expedient of signing arbitration agreements with all

or almost all of its creditors. Indeed, on Eletson's theory, an arbitrator presumably could even prevent a creditor—in either a voluntary or involuntary proceeding—from filing a notice of claim in a bankruptcy proceeding until the arbitration was concluded. If the filing was part of an "overall strategy . . . intended to disrupt the status quo and find another path to obtain the 'assets of [the Company] . . . or assets in dispute in th[e] arbitration,'" Dkt. No. 67-58 at 61, such an injunction would be within the arbitrator's prerogative. Such an order might provide an immediate benefit to a party in the arbitration. However, it would forestall the bankruptcy, delay the debtor's liquidation or emergence from bankruptcy, and thereby would undermine the rights of all of the other creditors, undercut the functioning of the Bankruptcy Code, and intrude on the exclusive jurisdiction of the bankruptcy courts.

The risk is not merely hypothetical. In this case, Pach Shemen joined a petition filed by just two of Holdings' creditors who sought the assistance of the bankruptcy court in order to protect against the risk of Holdings' dissipation of assets. As it turns out, their petition was well-founded. The involuntary bankruptcy was not dismissed. Holdings ultimately agreed to file a motion converting the bankruptcy proceeding to a voluntary case under Chapter 11 and the interests of the creditors are being protected. Dkt. No. 65 ¶ 134; Dkt. No. 66 ¶ 134. In the bankruptcy, Holdings agreed to pay the fees of the involuntary creditors. There was no finding, nor apparently could there have been one, by the bankruptcy court that the involuntary petitions did not qualify or that the petition was filed in bad faith. Had Pach Shemen not joined in the relief requested by the other creditors, the bankruptcy court might never have been in the position to accord such relief. The congressional purpose underlying Section 303 would have been thwarted. It thus cannot be that the arbitrator had the power to prevent Pach Shemen from

joining the petition or, once Pach Shemen had joined the petition, to impose on it damages not authorized by Section 303 for having done so.

Of course, here, the Court need not go so far as to hold that two parties could never agree to delegate to an arbitrator the power to determine whether either could file an involuntary bankruptcy petition. It is clear from the arbitration provision here that the parties did not agree to give that power to this arbitrator, and thus that the arbitrator exceeded his powers either by issuing the injunction he did as applied to the filing of the bankruptcy petition or by ordering damages for the violation of the injunction. The arbitrator had the power to protect the property and disposable goods that were the subject of the arbitration and to preserve the integrity of the proceedings before him. Instead, the Status Quo Injunction as interpreted and applied by the arbitrator granted relief of a different nature. The arbitrator interpreted and applied the Status Quo Injunction to prevent an entity that was not before the arbitral tribunal from availing itself of its rights to relief in judicial fora, pursuant to instruments that were not the subject of the arbitration, and pursuant to rights over which the arbitral tribunal had no jurisdiction. And it did so by preventing that third party from seeking the relief available to any person—debtor or creditor—available from the bankruptcy courts pursuant to the Bankruptcy Code. Permitting an arbitrator to enjoin an involuntary bankruptcy petition would fundamentally change the nature of arbitration, effectively forcing into the arbitral tribunal issues that affect the rights of third parties and that are committed by the Bankruptcy Code to the bankruptcy courts. In *Stolt-Nielsen S.A.*, 559 U.S. at 685, the Supreme Court refused to read an arbitration agreement as authorizing class arbitration where the agreement was silent regarding class arbitration. The Court recognized that "parties are 'generally free to structure their arbitration agreements as they see fit,'" *id.* at 683 (quoting *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 57 (1995))), including by

selecting the "rules under which any arbitration will proceed," *id.* Still, the Court refused to infer from silence agreement to a procedure that would fundamentally change the nature of arbitration. *Id.* Here too, the LLCA's silence with respect to anti-bankruptcy cannot be read as a conferral of such authority of a fundamentally different nature.

The same conclusion follows with respect to the Bondholder Litigation. Although the arbitrator stated that the proceedings were launched to "find another path to obtain the 'assets of [the Company] . . . or assets in dispute in this arbitration,'" Dkt. No. 67-58 at 61, the matters to be addressed in the arbitration proceeding and in the Bondholder Litigation just like those in the bankruptcy proceeding, respectively, were entirely different. The former went to Eletson's rights under the LLCA and whether the Company or the Nominees were entitled to the Preferred Interests; the latter went to the rights of Pach Shemen under the bond indenture to the payment of interest and the repayment of principal for loans that had been extended to Holdings. The arbitrator did not find that the Bondholder Litigation or the bankruptcy proceedings would resolve any of the legal or factual issues in the arbitration. Because both sets of proceedings involved different issues, they could not have done so. He also did not base his finding of a violation on any notion that the Bondholder Litigation interfered with or undermined the integrity of the arbitration. Before it was stayed on March 8, 2023 following the filing of the bankruptcy petition, the only activity on the docket consisted of Holdings' agreement with the Trustee that Holdings would have additional time to respond to the complaint. *Wilmington Sav. Fund Soc'y, FSB*, CM-ECF No. 23-cv-261, Dkt Nos. 17, 22.

As Respondent notes, an arbitration award is divisible for purposes of confirmation. *See D.H. Blair & Co.*, 462 F.3d at 104 (holding that a court "can confirm . . . the award either in whole or in part" in FAA case); *Orion Shipping & Trading Co.*, 312 F.2d 299 (affirming district

court's partial confirmation in FAA case). The Court chooses to do so here in light of the "strong federal policy favoring arbitration, the enforcement of arbitration agreements and the confirmation of arbitration awards." *Pike*, 266 F.3d at 89; *cf. Smarter Tools Inc.*, 57 F.4th at 383 ("An award should be enforced, 'despite a court's disagreement with it on the merits, if there is a barely colorable justification for the outcome reached.'" (quoting *T.Co Metals, LLC v. Dempsey Pipe & Supply, Inc.*, 592 F.3d 329, 339 (2d Cir. 2010))). The portions of the award that found Levona, Pach Shemen, and Murchinson liable for violating the Status Quo Injunction and the damages ordered for those violations thus cannot stand.[32]

E. Fee Award to Corp and Holdings

Finally, Respondent argues that the arbitrator exceeded his authority in awarding fees and costs to Holdings and Corp. Dkt. No. 50 at 31. The arbitrator awarded Petitioners $9,590,222 in attorneys' fees, expenses, and costs for the arbitration, including a success fee in the amount of $1,794,950.70. Dkt. No. 67-58 at 86–87. Respondent argues that the award of attorneys' fees and costs to Petitioners exceeded the arbitrator's authority because the LLCA empowers the arbitrator to "award reasonable attorneys' fees and reasonable travel expenses (excluding meals) to the prevailing party," Dkt. No. 67-2 § 12.14(d), and because Delaware law states that "'the defendant is the prevailing party' if a plaintiff receives 'zero dollars in damages,'" Dkt. No. 50 at 31 (quoting *Cooke v. Murphy*, 99 A.3d 226 (Del. 2014)). As Holdings and Corp were not awarded damages by the arbitrator, Respondent argues that the arbitrator could not permissibly

[32] The Court therefore need not consider Respondent's argument that this portion of the Award should be vacated on the theory that the arbitrator was without power to award fees and costs incurred in the bankruptcy case to parties other than the bankrupt debtor—Holdings, Dkt. No. 50 at 28, except to note that the arbitrator did not award fees and costs to third parties but rather to Eletson "*to be paid to the entity or individuals who paid those costs and fees*." Dkt. No. 67-58 at 67 (emphasis added). Whether Eletson would have had the power to further distribute the compensation to other parties is not before the Court.

interpret the LLCA in a manner that would deem Holdings and Corp prevailing parties eligible for fees. *Id.*

Petitioners respond that the arbitrator had the authority to determine that Holdings and Corp were prevailing parties and that he therefore also had the authority under the LLCA to award them attorneys' fees and costs. Dkt. No. 54 at 27–28. Petitioners dispute Respondents' assertion that Delaware law requires a party to be awarded nonzero dollar damages to be considered the prevailing party, and argue instead that "a prevailing party is one who 'predominated in the litigation.'" *Id.* at 28 (quoting *Bako Pathology LP v. Bakotic*, 288 A.3d 252, 281 (Del. 2022)). Petitioners point to a case under Delaware law in which a court granted a party prevailing status and awarded it attorneys' fees and expenses even though its only relief in the underlying action was inspection of certain books and records. *Id.* (citing *Aloha Power Co., LLC v. Regenesis Power, LLC*, 2017 WL 6550429, at *5 (Del. Ch. Ct. Dec. 22, 2017)).

The arbitrator rejected Respondent's argument as "completely without merit." Dkt. No. 67-58 at 87. The arbitrator reasoned that, throughout the arbitration, it had been "clear that, in the event the option was exercised, the preferred interests would transfer to [the Company] or its nominee," *id.* at 88, and that "Eletson would turn over any damages" to the non-party Company, *id*. He thus ruled "it is Eletson that substantially prevailed on its claims in this arbitration." *Id.* at 88.

The fee award was well within the scope of the arbitrator's "contractually delegated authority." *Jock*, 942 F.3d at 622 (quoting *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569 (2013)). An arbitrator may award attorneys' fees and/or arbitration costs, to the extent they are permitted in the relevant arbitration provision or agreement. *See, e.g.*, *PaineWebber Inc. v. Bybyk,* 81 F.3d 1193, 1199 (2d Cir. 1996); *LiveWire Ergogenics*, 645 F. Supp. 3d at 299. The

LLCA delegated to the arbitrator the authority to interpret its terms and to determine any dispute, claim or controversy arising out of it. Dkt. No. 67-2 § 12.14(a). One of those terms is Section 12.14(d) which provides in pertinent part that "the arbitrator shall have discretion to award reasonable attorneys' fees and reasonable travel expenses (excluding meals) to the prevailing party, which fees may be set by the arbitrator of such action . . . and which fees shall be in addition to any other relief that may be awarded." *Id.* § 12.14(d). Thus, the arbitrator did not exceed his authority when he addressed the question of the prevailing party in the arbitration and determined that Petitioners were the prevailing party. *See, e.g.*, *DiRussa v. Dean Witter Reynolds Inc.*, 121 F.3d 818, 824 (2d Cir.1997), *cert. denied*, 522 U.S. 1049 (1998); *MasTec N. Am., Inc. v. MSE Power Sys., Inc.*, 581 F. Supp. 2d 321, 330–31 (N.D.N.Y 2008); *Ferrand v. Mystique Brands LLC*, 2021 WL 119572, at *8 (S.D.N.Y. Jan. 13, 2021); *Ludgate Ins. Co., Ltd. v. Banco De Seguros Del Estado*, 2003 WL 443584, at *6–7 (S.D.N.Y. Jan. 6, 2003).

Respondent's argument is more properly understood as a challenge to the substance of the arbitrator's decision and whether he acted in manifest disregard of the law in determining that Petitioners were the prevailing party. So framed, however, the claim is no more successful. Respondent relies upon the Delaware Supreme Court's decision in *Cooke v. Murphy*, 99 A.3d 226, a motor vehicle accident case in which the court held that a plaintiff who proved the defendant's liability but failed to prove damages was not the prevailing party and was not entitled to an award of costs under Delaware Superior Court Civil Rule 54(d).[33] Following an earlier decision by a lower court, the Delaware Supreme Court reasoned "that where the

[33] Delaware Superior Court Civil Rule 54(d) states: "Except when express provision therefor is made either in a statute or in these Rules or in the Rules of the Supreme Court, costs shall be allowed as of course to the prevailing party upon application to the Court within ten (10) days of the entry of final judgment unless the Court directs otherwise." Del. Super. Ct. Civ. R. 54(d).

judgment reflects an award of zero dollars, 'it necessarily follows that Plaintiff has obtained no judgment from Defendant and Defendant is indeed the prevailing party for purposes of Rule 54(d).'" *Id.* at *3 (quoting *Streetie v. Progressive Classic Ins. Co.*, 2011 WL 1259809, at *15 (Del. Super. Ct.) *aff'd*, 35 A.3d 419 (Del. 2011)).

The arbitrator did not manifestly disregard any law in determining that Petitioners were the prevailing parties under the LLCA and entitled to an award of fees. *Cooke* neither addressed the question whether a party to a contract who succeeds in enforcing a provision specifically benefitting third parties is a prevailing party, nor did it involve a contractual fee-shifting provision. Here, where there was a contractual fee-shifting provision, the question whether Petitioners were prevailing parties here is purely one of contractual interpretation. *See Bako Pathology LP*, 288 A.3d at 280–81. The term "prevailing party" is a legal "term of art that the parties bargained for in the contract[]." *Id.* at 281. It refers to the party which has "predominated in the litigation" and "who has prevailed on most of [the] claims." *Id.* (internal citations omitted). The prevailing party need not have personally received an award of money damages. *See, e.g.*, *Aloha Power Co.*, 2017 WL 6550429, at *5 (concluding that party who succeeded in books-and-records dispute was the prevailing party); *Mastrio v. Sebelius*, 768 F.3d 116, 120 (2d Cir. 2014) ("A plaintiff receiving . . . injunctive relief may be a prevailing party where she prevailed on the merits." (internal quotation marks omitted)); *Tex. State Tchrs. Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782 (1989) ("Plaintiffs may be considered 'prevailing parties' for attorneys' fee purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit.'"); *cf. Farrar v. Hobby*, 506 U.S. 103, 113 (1992) ("[T]he *degree* of the plaintiff's success does not affect eligibility for a fee award." (alteration in original)).

The arbitrator acted within his discretion in determining that Petitioners were the prevailing parties and in awarding them fees. In its Third Amended Statement of Claims and Response to Counterclaims, Eletson sought a determination that Levona *never* had any lawful interests in the Company, that the assignment of the two entities owning Company vessels to Levona was procured by coercion, fraud, illegal, and other wrongdoing and is null and void, that Levona not be considered an interest holder of the Company, or, in the alternative, specific performance of the buy-out of Levona's preferred stock, and compensatory and punitive damages and attorneys' fees. Dkt. No. 31-35. In its Counterclaims, Levona sought an order requiring any agent of Eletson to vacate the two Company vessels, declaratory judgment that the loan was not repaid and the Purchase Option was not executed, a declaration that Levona remains in control of the preferred shares, a declaration that Levona is authorized to execute a deal with Unigas, and compensatory and punitive damages and attorneys' fees. Dkt. No. 31-11.

The arbitrator ruled for Petitioners. He concluded: "Claimants have proven breaches of the LLCA and the covenant of good faith and fair dealing and established that Eletson exercised the purchase option pursuant to the BOL, and are therefore entitled to the declaratory relief, compensatory damages, punitive damages, prejudgment interest, and attorney's fees," and that "Respondent has not proven any of its counterclaims and they are dismissed. Respondent is entitled to recover nothing from the Claimants." Dkt. No. 67-58 at 95. The arbitrator issued declaratory relief finding that Eletson exercised the buyout option in the BOL; that as of March 11, 2022, Levona had no membership interest in the Company; that the Preferred Interests were transferred to the Nominees; that Levona had breached the LLCA and violated the Status Quo Injunction; and that Levona, Murchinson, and Pach Shemen were obligated to pay damages to the Company and to the Nominees. *Id.* at 95–100. As a result of the Award, Eletson and the

Nominees will be the sole owners of the Company. It is irrelevant that the Preferred Interests will be transferred to the Nominees and not to Eletson itself. Under the BOL, the Preferred Interests would never have been transferred to Eletson—Eletson contracted for a buyout option for the Company or the Nominees to receive the Preferred Interests. But the fact that, as a result of Eletson prevailing on its contract claim, the Company or the Nominees will receive the direct monetary benefit does not make Eletson any less the prevailing party than it would any other contract party who succeeds in enforcing a contract provision that inures to the benefit of a third-party beneficiary. It does not prevent Eletson from being a prevailing party. *See, e.g.*, *Dattner v. Conagra Foods, Inc.*, 458 F.3d 98 (2d Cir. 2006); *Christopher P. by Norma P. v. Marcus*, 915 F.2d 794, 804–05 (2d Cir. 1990), *cert. denied*, 498 U.S. 1123 (1991). *Ferrand*, 2021 WL 119572, at *10 ("Even assuming *arguendo* that Ferrand's application here of the contractual term 'prevailing party' were the more persuasive, this case falls far short of being one of 'those exceedingly rare instances where some egregious impropriety on the part of the arbitrators is apparent but where none of the provisions of the FAA apply.'" (quoting *Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 389 (2d Cir. 2003))).

III. Whether the Arbitrator Manifestly Disregarded the Law

Lastly, Respondent argues that the arbitrator grossly misinterpreted the BOL and manifestly disregarded the law. Dkt. No. 50 at 32. Specifically, Respondent contends that the arbitrator acted in manifest disregard of the law by relieving Eletson of the obligation under the BOL to have provided formal written notice of its intention to exercise the Purchase Option, *id.* at 33–34, and by failing to make any effort to interpret the BOL under English law, *id.* at 34–35. According to Respondent, these "deviation[s] from the plain contractual language and fundamental canons of contract interpretation [were] so far outside the range of permissible decisions as to warrant vacatur." *Id.* at 35.

Review of an arbitration award for manifest disregard of law is "severely limited." *Westerbeke Corp. v. Daihatsu Motor Co., Ltd.*, 304 F.3d 200, 208 (2d Cir. 2002) (Sotomayor, J.) (quoting *Gov't of India v. Cargill Inc.*, 867 F.2d 130, 133 (2d Cir. 1989)). To vacate an arbitral award on grounds of manifest disregard, the court "must find 'something beyond and different from a mere error in the law or failure on the part of the arbitrators to understand or apply the law.'" *Id.* (quoting *Saxis S.S. Co. v. Multifacs Int'l Traders, Inc.*, 375 F.2d 577, 582 (2d Cir. 1967)). Vacatur under the manifest disregard standard is limited to "those exceedingly rare instances where some egregious impropriety on the part of the arbitrator is apparent." *Weiss v. Sallie Mae, Inc.*, 939 F.3d 105, 109 (2d Cir. 2019) (quoting *T.Co Metals, LLC*, 592 F.3d at 339). "A court may vacate an arbitral award based on manifest disregard only upon a finding that '(1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrators was well defined, explicit, and clearly applicable to the case.'" *Precision Castparts Corp. v. Schultz Holding GmbH & Co. KG*, 2020 WL 4003578, at *2 (S.D.N.Y. July 15, 2020) (quoting *Zurich Am. Ins. Co.*, 811 F.3d at 589). "The test has sometimes been described in three parts, as requiring a demonstration that (1) 'the law that was allegedly ignored was clear, and in fact explicitly applicable to the matter before the arbitrators'; (2) 'the law was in fact improperly applied, leading to an erroneous outcome;' and (3) 'the arbitrator must have known of [the law's] existence, and its applicability to the problem before him.'" *Id.* (quoting *T.Co Metals*, 592 F.3d at 339); *see also LiveWire Ergogenics*, 645 F. Supp. 3d at 296. "A federal court cannot vacate an arbitral award merely because it is convinced that the arbitration panel made the wrong call on the law." *Wallace*, 378 F.3d at 190. Indeed, "[o]nly a barely colorable justification for the outcome reached by the arbitrators is necessary to confirm the award," *D.H. Blair & Co.*, 462 F.3d at 110, even if the "court[] disagree[s] with [the

arbitrator] on the merits," *Wallace*, 378 F.3d at 190. "A 'barely colorable justification' exists so long as the arbitrators had reasoning on which they 'could have justifiably rested their decision.'" *Smarter Tools*, 57 F.4th at 383 (quoting *Willemijn Houstermaatschappij, BV v. Standard Microsystems Corp.*, 103 F.3d 9, 13–14 (2d Cir. 1997).

A. The Notice Requirement

Levona first contends that the arbitrator manifestly disregarded the law by holding that Petitioners had satisfied the notice requirement of the BOL. Dkt. No. 50 at 34. The BOL provides that the Purchase Option is "exercisable by written notice to Levona" by the Company "for either [the Company] or its nominee to purchase all of the membership interests held by Levona in [the Company]." Dkt. No. 67-10 § 2.3. It further provides that if an Option Notice is not "validly served by the expiry of the Purchase Option Period," the Purchase Option will lapse. *Id*. § 2.5. The arbitrator found that "there does not seem to be a separate formal written notice provided to Levona by Eletson exercising the option," but concluded that Levona received actual notice and that the evidence established that "the parties acknowledged that Eletson was exercising the option." Dkt. No. 67-58 at 42. The arbitrator supported that conclusion by the content of the agenda for the March 10, 2022 Company Board of Directors meeting which contained the language "[u]pdate on Eletson's intention to exercise the purchase option." *Id.* As "additional support," he looked to the Unanimous Written Consent which was signed by all directors including Levona directors, but gave only the Eletson directors authority to sign or deliver on behalf of the company notices in connection with the BOL. *Id.* at 43–44. Finally, the arbitrator concluded that "both parties acted in a manner consistent with the fact that Levona had been bought out of the Company." *Id.* at 44. Thus, the arbitrator concluded "[a]t best, the absence of a written notice and payment of $1 dollar are formalities that the parties failed to

observe." *Id.* The arbitrator did not cite English law or Delaware law in those portions of his findings.[34]

Respondent supports its argument that the arbitrator's conclusion on notice satisfied the first two prongs of the manifest disregard test—that the law allegedly ignored was clear and explicitly applicable to the matter before the arbitrator, and that the arbitrator misapplied the law—by citing the general axiom that a contract is to be interpreted to give meaning to its every word, and the Delaware Supreme Court's 1986 decision in *Stoppi v. Wilmington Tr. Co.*, 518 A.2d 82, 86 (Del. 1986), regarding the notice required to be given by a secured party to a debtor prior to the sale or disposition of collateral under the Uniform Commercial Code. Dkt. No. 50 at 34; *see also* Dkt. No. 59 at 13.[35] Respondent argues that the third prong of the test was satisfied—that the arbitrator knew of the law's existence and its applicability to the problem before him—because they directed the arbitrator's attention to the proposition that "a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms." Dkt. No. 55-4 at 9 (quoting *Motors Liquidation Co. DIP Lenders Tr. v. Allianz Ins. Co.*, 2017 Del. Super. LEXIS 279, at *16 (Del. Super. Ct. June 8, 2017)). The argument that the arbitrator manifestly disregarded the law in excusing Petitioners from the requirement of providing written notice is without merit. First, the general proposition of

[34] "[I]t is axiomatic that arbitrators need not disclose the rationale for their award." *Fahnestock & Co., Inc. v. Waltman*, 935 F.2d 512, 516 (2d Cir. 1991). So long as the Court can infer a ground for the arbitrator's decision from the facts of the case, the Court must confirm the award. *Standard Microsystems Corp.*, 103 F.3d at 9.

[35] *Stoppi* interpreted the former Section 9-504(3) of the U.C.C. *Stoppi*, 518 A.2d at 84–86. Article 9 of the U.C.C. was recodified in 2001 and the former Section 9-504(3) is now Section 9-611. It requires a second party that disposes of collateral under Section 9-610 of the U.C.C. to "send" to the debtor and any secondary obligor a "reasonable authenticated notification of disposition." U.C.C. §§ 9-611(b), (c). The *Stoppi* court relied upon a definition of "send" to mean deposition in the mail or delivery for transmission to mean that the notification must be in writing.

contract law that a contract is interpreted according to its plain meaning and so as to give every word meaning provides only limited support to Levona, in the face of the other general proposition that, at least in some circumstances and in some states including Delaware, whether viewed as a covenant or a condition precedent, "[n]otice provisions have generally been interpreted to require substantial compliance," not literal compliance. Richard A. Lord, 6 Williston on Contracts § 49:88 (4th ed. 2003); *Gower v. Trux, Inc.*, 2022 WL 534204, at *11 (Del. Ch. Ct. Feb. 23, 2022) ("When confronted with less than literal compliance with a notice provision, courts have required that a party substantially comply with the notice provision." (quoting *Gildor v. Optical Sols., Inc.*, 2006 WL 4782348, at *7 (Del. Ch. Ct. June 5, 2006))); *Kelly v. Blum*, 2010 WL 629850, at *8 n.52 (Del. Ch. Ct. Feb. 24, 2010) (same); *cf. James Constr. Grp., LLC v. Westlake Chem. Corp*., 650 S.W.3d 392, 405 (Tex. 2022), *reh'g denied* (Sept. 2, 2022); *Bantz v. Bongard*, 864 P.2d 618, 624 (Idaho 1993) ("This Court has long held that only substantial compliance with a contractual notice provision is required."); *Putney Sch., Inc. v. Schaaf*, 599 A.2d 322, 327 (Vt. 1991) ("The rule in Vermont is that substantial compliance with notice requirements will suffice."). Nor do Respondent's citations to Delaware case law. The Delaware Superior Court's decision in *Motors Liquidation Co.* involved the question whether insurance policies that were the assets of General Motors's predecessor had been validly assigned to its successor trust, and in the quotations cited by Levona, the court relied upon New York law. 2017 Del. Super. LEXIS 279, at *16 n. 61 (citing *Greenfield v. Philles Recs., Inc.*, 780 N.E.2d 166 (N.Y. 2002)). It has no apparent bearing on the notice issues raised here. *Stoppi v. Wilmington Trust Co.*, 518 A.2d at 86, the case Levona cites before this Court, holds that written notification to the debtor prior to any sale or other disposition on collateral is "the better rule" under the U.C.C, but also recognizes that "other jurisdictions have

split on the issue." It does not demonstrate that the law that was allegedly ignored was "clear, and in fact explicitly applicable to the matter before the arbitrators." *Precision Castparts Corp.*, 2020 WL 4003578, at *2.

Generally, Respondent misstates the law when it argues that it is sufficient that the arbitrator "knew the Delaware legal principles governing contract interpretation" and that those general principles should be interpreted to defeat Eletson's right to exercise the option in the absence of written notice. Dkt. No. 59 at 18. A party who agrees for an arbitrator to determine its disputes does not contract for those disputes to be determined in accordance with law, but only not in manifest disregard of the law. The Second Circuit has stated that "[a] party seeking vacatur bears the burden of proving that the arbitrators were fully aware of the existence of a clearly defined governing legal principle, but refused to apply it, in effect, ignoring it." *Duferco Int'l Steel Trading*, 333 F.3d at 389.[36] Moreover, in the absence of "an error that is so obvious that it would be instantly perceived as such by the average person qualified to serve as an arbitrator," the only duty of the arbitrator is to be aware of the "governing law identified by the parties to the arbitration." *Id.* Thus, the parties must have made the arbitrator aware not only of the law's existence, but also of "its applicability to the problem before him." *Precision Castparts Corp.*, 2020 WL 4003578, at *2 (quoting *T.Co Metals*, 592 F.3d at 339); *Goldman v. Architectural Iron Co.*, 306 F.3d 1214, 1216 (2d Cir. 2002); *Aksman v. Greenwich Quantitative Rsch. LP*, 563 F. Supp. 3d 139, 150 (S.D.N.Y. 2021), *aff'd*, 2023 WL 6799770 (2d Cir. Oct. 16, 2023) (summary order). More specifically, although the Delaware Superior Court in 2018 required literal compliance with a notice provision preventing the release of funds from escrow

[36] The Third Circuit and the Delaware Supreme Court have both adopted this rule verbatim. *See, e.g.*, *Black Box Corp. v. Markham*, 127 F. App'x 22, 24 (3d Cir. 2005); *SPX Corp. v. Garda USA, Inc.*, 94 A.3d 745, 750 (Del. 2014).

where the contract at issue defined what constituted reasonable notice and required the release of funds if such notice was not provided, *see, e.g.*, *PR Acquisitions, LLC v. Midland Funding LLC*, 2018 WL 2041521, at *6–7 (Del. Ch. Ct. Apr. 30, 2018) (granting summary judgment for plaintiff where defendant contracting party "never directly gave notice to [the plaintiff] in any form before the [contractually specified] date," and did not, in course of litigation, offer any "reason other than its own error for its failure to comply with the notice provision it negotiated"), and more recently stated "as a matter of law, where the contract specifies what constitutes notice thereunder and dictates how to communicate that notice, strict compliance with the notice provision is necessary," *Aluminum Source, LLC v. LLFlex, LLC*, 2023 WL 2547996, at *19 (Del. Sup. Ct. Mar. 16, 2023), that rule appears not to be as uniformly applicable or oblivious to context as Levona suggests. Following *PR Acquisitions*, the Delaware Chancery Court has explained that Delaware courts have "at times, accepted substantial compliance with notice provisions in lieu of actual compliance, when the circumstances so justified." *Vintage Rodeo Parent, LLC v. Rent-A-Center, Inc.*, 2019 WL 1223026, at *15 (Del. Ch. Ct. Mar. 14, 2019). As Chancellor Strine explained: "The requirement of substantial compliance is an attempt to avoid 'harsh results . . . where the purpose of these [notice] requirements has been met.' . . . Substantial performance is 'that which, despite deviations from contract requirements, provides the important and essential benefits of the contract.'" *Gildor*, 2006 WL 4782348, at *7 (internal citations omitted).

Critically, Levona did not cite any of these cases or any other cases that could possibly be relied on to support its position to the arbitrator, and thus did not put him on notice of the applicable law. Levona's argument to the arbitrator regarding notice was limited to a single sentence: "[n]o 'written option notice' was given—this is undisputed." Dkt. No. 55-4 at 19. It

cited no law to the effect that the failure to provide written notice would defeat the exercise of the option when both parties actually knew of Eletson's exercise of the option within the Purchase Option Period. It therefore cannot be said that the arbitrator "knew of a governing legal principle yet refused to apply it or ignored it altogether." *DiRussa*, 121 F.3d at 824 (quoting *Folkways*, 989 F.2d at 112). Accordingly, its argument that the arbitrator manifestly disregarded the law in finding that the notice requirement had been satisfied is unavailing.

B. Interpretation Under Delaware Law

Levona's argument that the arbitrator manifestly disregarded the law by looking only to Delaware law and not to English law is no more successful. The BOL has a choice-of-law clause providing that it would be "governed by and construed in accordance with English law." Dkt. No. 67-10 § 10. Levona did not cite to the arbitrator any English law but only to Delaware law and to New York law. Dkt. No. 31-38 at 48–49, 52–55, 66–67. It can hardly complain that the arbitrator manifestly disregarded a body of law to which it did not direct the arbitrator's attention. *See, e.g.*, *Wallace*, 378 F.3d at 195; *Westerbeke*, 304 F.3d at 209; *DiRussa*, 121 F.3d at 823; *see also GMS Grp., LLC v. Benderson*, 326 F.3d 75, 77–78 (2d Cir. 2003); *Halligan v. Pipe Jaffray, Inc.*, 148 F.3d 197, 202 (2d Cir. 1998), *cert. denied*, 526 U.S. 1034 (1999).

CONCLUSION

The application to confirm is GRANTED IN PART and DENIED IN PART and the motion to vacate is GRANTED IN PART and DENIED IN PART.

The Court confirms the Award as stated in Dkt. No. 67-58, beginning on page 95, including the award of compensatory and punitive damages and the grant of attorneys' fees, costs, expenses, and pre-judgment interest, with the following exceptions:

- Paragraphs A.7, A.8, A.10(i), and A.10(iii) are vacated.
- All awards of relief against Murchinson and Pach Shemen are vacated.

- All awards of relief, including compensatory and punitive damages, based upon violations of the Status Quo Injunction are vacated.

- All awards of attorneys' fees, costs, and expenses relating to the involuntary bankruptcy petition and Bondholder Litigation are vacated.

Parties are directed to each submit a proposed judgment in accordance with this Opinion and Order by February 23, 2024. The Clerk of Court is respectfully directed to close Dkt. Nos. 28, 49.

SO ORDERED.

Dated: April 19, 2024
New York, New York

LEWIS J. LIMAN
United States District Judge

EXHIBIT D

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 04/19/2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELETSON HOLDINGS, INC. and ELETSON CORPORATION,

Petitioners,

-v-

LEVONA HOLDINGS LTD.,

Respondent.

23-cv-7331 (LJL)

ERRATA ORDER

LEWIS J. LIMAN, United States District Judge:

The Opinion and Order filed on February 9, 2024 at Dkt. No. 83 contained a typographical error. On page 79, the sentence that reads, "The arbitrator thus exceeded his authority when he ruled that Pach Shemen and Murchinson were required to pay damages to Levona[,]" should read, "The arbitrator thus exceeded his authority when he ruled that Pach Shemen and Murchinson were required to pay damages to Eletson."

Along with this Errata Order the Court is separately filing an Amended Opinion and Order correcting that error. The error and correction reflected in the Amended Opinion and Order have no impact on the substance of the Opinion.

SO ORDERED.

Dated: April 19, 2024
New York, New York

LEWIS J. LIMAN
United States District Judge

EXHIBIT E

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 02/14/2025

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELETSON HOLDINGS, INC. and ELETSON CORPORATION,

Petitioners,

-v-

LEVONA HOLDINGS LTD.,

Respondent.

23-cv-7331 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

As stated on the record during the hearing on February 14, 2025, the Court sua sponte amends the second sentence of the Amended Opinion and Order of April 19, 2024, at Dkt. No. 104 at p. 123. As originally ordered, the second sentence began: "The Court confirms the Order." It is amended to add the conditional language: "Subject to the resolution of Levona's pending motion to vacate the award and its defense based on fraud in the arbitration." The amended order should be read to state, in the final sentence on page 123: "Subject to the resolution of Levona's pending motion to vacate the award and its defense based on fraud in the arbitration, the Court confirms the Award as stated in Dkt. No. 67-58, beginning on page 95, including the award of compensatory and punitive damages and the grant of attorneys' fees, costs, expenses, and pre-judgment interest, with the following exceptions . . ."

SO ORDERED.

Dated: February 14, 2025
New York, New York

LEWIS J. LIMAN
United States District Judge

EXHIBIT F

Execution Version

Eletson Gas LLC

THIRD AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

Dated as of August 16, 2019

THE MEMBERSHIP INTERESTS OF ELETSON GAS LLC ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED EXCEPT IN COMPLIANCE WITH THIS THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT.

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ELETSON GAS LLC

This **THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT**, as supplemented, amended, modified or restated from time to time (this "***Agreement***") of Eletson Gas LLC, a limited liability company formed under the laws of the Republic of the Marshall Islands (the "***Company***"), is dated as of August 16, 2019 (the "***Effective Date***"), by and among the Company, BTO Eletson Holdings L.P., an exempted limited partnership formed under the laws of the Cayman Islands ("***BX***"), Blackstone Family Tactical Opportunities Investment Partnership (Cayman) ESC L.P., an exempted limited partnership formed under the laws of the Cayman Islands ("***Blackstone Family***"), Blackstone Family Tactical Opportunities Investment Partnership (Cayman) SMD L.P., an exempted limited partnership formed under the laws of the Cayman Islands ("***BTO SMD***"), Eletson Holdings Inc., a corporation formed under the laws of Liberia ("***Eletson***"), Eletson Corporation, a corporation formed under the laws of Liberia (the "***Special Member***") and each of the Persons signatories hereto and listed on the Register (as supplemented or amended from time to time) who are admitted as Members pursuant to Section 10.1. Capitalized terms used herein without definition have the meanings specified in Section 1.1.

BACKGROUND

WHEREAS, the Company was formed under the Act pursuant to a Certificate of Formation filed with the Republic of the Marshall Islands (as amended, modified, supplemented or restated from time to time, the "***Certificate of Formation***");

WHEREAS, Eletson entered into that certain Limited Liability Company Agreement of the Company, dated as of April 12, 2013;

WHEREAS, the Company, BX and Eletson entered into that certain Contribution Agreement ("***Contribution Agreement***"), dated as of September 13, 2013, pursuant to which (i) Eletson contributed to the Company 100% of its respective Equity Interests in each of the entities listed on Schedule I hereto (the "***Shipcos***") (which constitutes all of the outstanding Equity Interests in the Shipcos), (ii) BX made a capital commitment of $125 million to the Company (the "***Initial BX Capital Commitment***") and (iii) each of BX, Blackstone Family, BTO SMD and Eletson were issued Units;

WHEREAS, in connection with the transactions contemplated by the Contribution Agreement, on October 17, 2013 (the "***Initial Closing Date***") the Company, BX, Blackstone Family, BTO SMD and Eletson entered into the Amended and Restated Limited Liability Company Agreement of the Company (as supplemented, amended, modified or restated from time to time, the "***First Amended and Restated LLC Agreement***");

WHEREAS, after expiration of the commitment period for the Initial BX Capital Commitment, pursuant to that certain Equity Commitment Letter, dated as of December 21, 2017 (as supplemented, amended, modified or restated from time to time, the "***Equity Commitment Letter***"), BX, Blackstone Family and BTO SMD made a new capital commitment of $23,441,430 in the aggregate to the Company (the "***Second BX Capital Commitment***") and,

subject to the terms and conditions of such Equity Commitment Letter, received upon funding of such commitment a newly created class of Units of the Company;

WHEREAS, in connection with the transactions contemplated by the Equity Commitment Letter, on the Second Restatement Effective Date, the Company, BX, Blackstone Family, BTO SMD and Eletson entered into the Second Amended and Restated Limited Liability Company Agreement of the Company (as amended by Amendment No. 1, dated as of June 30, 2018 and Amendment No. 2, dated as of September 1, 2018, and as further supplemented, amended, modified or restated from time to time, the "***Second Amended and Restated LLC Agreement***");

WHEREAS, as of the Effective Date, the Special Member provides ship management services for the Vessels under the Management Agreements;

WHEREAS, in connection with a restructuring of the accrued management fees under the Management Agreements in effect as of the Effective Date, the Company and the Special Member have agreed pursuant to that certain letter agreement among the Company, certain Subsidiaries of the Company and the Special Member dated as of August 16, 2019 to issue a newly created class of Units of the Company to the Special Member; and

WHEREAS, the parties desire to amend and restate the Second Amended and Restated LLC Agreement in its entirety and enter into this Agreement to provide for the rights, preferences and privileges of each of the Members of the Company (including the Special Member).

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the parties do hereby agree to amend and restate the Second Amended and Restated LLC Agreement as follows:

ARTICLE I
GENERAL PROVISIONS; MEMBERS AND MEMBERSHIP INTERESTS

1.1 Definitions. As used herein the following terms have the meanings set forth below:

"Acceptance Notice" has the meaning set forth in Section 10.2(c).

"Accredited Investor" has the meaning assigned to such term under Regulation D promulgated pursuant to Section 4(2) of the Securities Act.

"Accrued Value" means the sum of (i) Funded Commitments, plus (ii) the Unpaid Cash Preferred Return, plus (iii) any Unpaid PIK Amount, minus (iv) cumulative distributions made to the Class A Preferred Members pursuant to Section 8.1(b)(ix).

"Act" means the Limited Liability Company Act of 1996 of the Republic of the Marshall Islands, as amended, and any successor to such statute.

"Additional Member" has the meaning set forth in Section 10.1.

"Adjustment Date" means the last day of each Fiscal Year and any other date that the Board determines to be appropriate for an interim closing of the Company's books (including, without limitation, the day before the redemption or issuance of an interest in the Company).

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with such specified Person.

"Agreement" has the meaning set forth in the preamble hereto.

"Applicable Law" means the laws of the country having jurisdiction over the Company, any Member, the country of registry of a Vessel, and the United States of America.

"Applicable Interest Rate" means cash interest at a rate of (i) during the period prior to December 31, 2015, 8% per annum, and (ii) thereafter, 13% per annum, in each case, compounding quarterly.

"Appraiser" means an independent third party valuation expert who is designated by the Board and is internationally recognized financial advisor with specific expertise in the valuation of shipping assets.

"Approved Budget" has the meaning set forth in Section 3.5.

"Approved Vessel" means Mathraki, the Contributed Vessels and each other Vessel to be constructed pursuant to the letters of intent described on Schedule V that is approved for purchase by the Board and is subject to (a) a binding construction or purchase agreement and (b) satisfactory debt financing arrangements, in each case, as has been approved by the Board in accordance with Section 3.2.

"As Converted Common Units" means, for each Common Member and Class A Preferred Member, as of any date, the sum of (i) the outstanding Common Units held by such Member, plus (ii) for each Class A Preferred Member, deemed conversion of Class A Preferred Units held by such Member into such number of additional Common Units equal to (A) such Member's Preferred Percentage Interest multiplied by (B) a number of Common Units determined in accordance with the following formula:

$$\frac{\text{Preferred Target Percentage} \times (13{,}000{,}000)}{1 - \text{Preferred Target Percentage}}$$

"BBA" means the Bipartisan Budget Act of 2015, P.L. 114-74.

"BIS License" has the meaning set forth in Schedule IV.

"Blackstone Family" has the meaning set forth in the preamble hereto.

"Board" has the meaning set forth in Section 3.3.

"BTO SMD" has the meaning set forth in the preamble hereto.

"Business Day" means any day other than (a) Saturday and Sunday and (b) any other day on which banks located in any of London, United Kingdom, Athens, Greece and New York, New York are required or authorized by law to remain closed.

"Buyout Acceptance Notice" has the meaning set forth in Section 10.8(b).

"Buyout Notice" has the meaning set forth in Section 10.8(b).

"BX" has the meaning set forth in the preamble hereto.

"BX Directors" has the meaning set forth in Section 3.3.

"Capital Account" has the meaning set forth in Section 7.1.

"Capital Contributions" means, with respect to any Member, any cash, cash equivalents or the value of property which such Member contributes to the Company pursuant to Section 1.7.

"Cash Reserve" means an amount equal to the excess, if any, of (i) $4 million minus (ii) the aggregate availability of the Company and its Subsidiaries under any revolving credit facility or similar entered into by the Company or its Subsidiaries for the purpose of funding working capital needs; *provided* that the amount specified in clause (i) may be adjusted from time to time by the Board and at no time shall be less than an amount sufficient to satisfy liquidity covenants of the Group Companies under any vessel financing arrangement entered into by a Group Company which has been approved by the Board; *provided*, *further*, that in connection with the final distribution of the Company pursuant to Section 11.3, the Cash Reserve shall be zero.

"Certificate of Formation" has the meaning set forth in the Background.

"Claims" has the meaning set forth in Section 5.3(a).

"Class" or "Class of Units" means a reference to a separate class of Units, with each such class having the rights and designations created pursuant to this Agreement.

"Class A Preferred Members" means the Members of the Company holding Class A Preferred Units, and shall in each case include their successors and permitted assigns to the extent admitted to the Company as Class A Preferred Members in accordance with the terms hereof, in their capacities as members of the Company.

"Class A Preferred Units" has the meaning set forth in Section 2.1.

"Class B Capital Contributions" means, Capital Contributions made by Class B Preferred Members in respect of the Class B Preferred Units.

"Class B Preferred Members" means the Class B-1 Preferred Members and the Class B-2 Preferred Members.

"Class B Preferred Units" has the meaning set forth in Section 2.1.

"Class B-1 Capital Contributions" means, Capital Contributions made by Class B Preferred Members in respect of the Class B-1 Preferred Units.

"Class B-1 Preferred Members" means the Members of the Company holding Class B-1 Preferred Units, and shall in each case include their successors and permitted assigns to the extent admitted to the Company as Class B-1 Preferred Members in accordance with the terms hereof, in their capacities as members of the Company.

"Class B-1 Preferred Units" has the meaning set forth in Section 2.1.

"Class B-2 Capital Contributions" means, Capital Contributions made by Class B Preferred Members in respect of the Class B-2 Preferred Units.

"Class B-2 Period" means 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.

"Class B-2 Preferred Members" means the Members of the Company holding Class B-2 Preferred Units, and shall in each case include their successors and permitted assigns to the extent admitted to the Company as Class B-2 Preferred Members in accordance with the terms hereof, in their capacities as members of the Company.

"Class B-2 Preferred Units" has the meaning set forth in Section 2.1.

"Common Members" means the Members of the Company holding Common Units, and shall in each case include their successors and permitted assigns to the extent admitted to the Company as Common Members in accordance with the terms hereof, each in their capacity as a Members.

"Common Units" has the meaning set forth in Section 2.1.

"Code" means the U.S. Internal Revenue Code of 1986, as amended from time to time.

"Company" has the meaning set forth in the preamble hereto.

"Company Expenses" means the reasonable costs and expenses reflected in the Approved Budget (or are incurred in ordinary course and are of amounts not required to be included in the Approved Budget) or otherwise approved by the Board pursuant to Section 3.4 that are incurred by or arise out of the organization and operation of the Company, including legal and accounting expenses (but excluding expenses of a Member or the Special Member, relating solely to matters concerning such Member in its capacity as a Member or Special Member).

"Contributed Vessels" means, collectively, (i) Anafi, (ii) Nisyros, (iii) Telendos II, (iv) Tilos and (v) Symi II.

"Contribution Agreement" has the meaning set forth in the Background.

"Control" means, with respect to any Person, the possession, directly or indirectly, of the affirmative power to direct or cause the direction of the management and policies of such Person, whether through the ownership of securities, partnership interests or other ownership interests, by contract, by membership or involvement in the board of directors, management committee or other management structure of such Person, or otherwise, including, but not limited to, the power to vote all of the Equity Interests held by such Person.

"Covered Persons" means (i) the Members, (ii) the Directors, (iii) any of the partners, members, shareholders, officers, directors, agents or employees of the Company and (iv) any of the Persons identified in clauses (i), (ii) and (iii) who was, at the time of the act or omission in question, a Person identified in clauses (i), (ii) and (iii). For the avoidance of doubt, the Special Member shall not be a Covered Person.

"Credit Facilities" means each of the Company's outstanding ship financing agreements including, without limitation, (i) that certain Facility Agreement relating to a loan facility of up to $138,000,000, dated as of April 22, 2016, by and among the Borrowers (as defined therein), the Company, as guarantor, BNP Paribas, Citibank N.A., London Branch, and Skandaninaviska Enskilda Banken AB (publ) ("SEB"), as amended, restated, modified and supplemented, (ii) that certain Facility Agreement relating to a term loan facility of up to $102,000,000, dated as of October 17, 2013, by and among the Borrowers (as defined therein), the Company, as guarantor, the Lenders (as defined therein) and DVB Bank SE as Agent, as amended, restated, modified and supplemented, including the guarantees relating thereto, (iii) that certain Facilities Agreement relating to loan facilities of up to $254,179,500, dated as of June 24, 2014, by and among the Borrowers (as defined therein) the Company, as guarantor, Citibank N.A., London Branch, Unicredit Bank AG, BNP Paribas, NIBC Bank N.V., and SEB, as amended, restated, modified and supplemented, and (iv) that certain Facility Agreement relating to a reducing revolving credit facility of up to $204,775,000, dated as of December 30, 2009, by and among the Borrowers (as defined therein), the Lenders (as defined therein) and Unicredit Bank AG, as Arranger, , as amended, restated, modified and supplemented.

"Damages" has the meaning set forth in Section 5.3(a).

"Deadlock" has the meaning set forth in Section 10.8(a).

"Debt" has the meaning set forth in the definition of Permitted Indebtedness.

"Deemed Distributable Amount" has the meaning set forth in Section 10.6(b).

"Default Financing" has the meaning set forth in Section 1.7(h).

"Depreciation" means, for each taxable year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for U.S. federal income tax purposes with respect to property for such taxable year, except that (a) with respect to any property the Gross Asset Value of which differs from its adjusted tax basis for U.S. federal income tax purposes and which difference is being eliminated by use of the remedial allocation method pursuant to Treasury Regulation Section 1.704-3(d), Depreciation for such taxable year shall be the amount of book basis recovered for such taxable year under the rules prescribed by Treasury Regulation Section 1.704-3(d)(2), and (b) with respect to any other property the Gross Asset

Value of which differs from its adjusted tax basis at the beginning of such taxable year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the U.S. federal income tax depreciation, amortization, or other cost recovery deduction for such taxable year bears to such beginning adjusted tax basis; *provided, that* if the adjusted tax basis of any property at the beginning of such taxable year is zero, Depreciation with respect to such property shall be determined with reference to such beginning value using any reasonable method selected by the Board.

"Designating Member" has the meaning set forth in Section 3.3.

"Directors" has the meaning set forth in Section 3.3.

"Disabling Conduct" means, with respect to any Person, such Person's fraud, bad faith, willful misconduct or gross negligence.

"Drag-Along Consideration" has the meaning set forth in Section 10.2(d)(v).

"Drag-Along Notice" has the meaning set forth in Section 10.2(d)(v).

"Drag-Along Representative" has the meaning set forth in Section 10.2(d)(ii).

"Drag-Along Transaction" has the meaning set forth in Section 10.2(d)(i).

"Effective Date" has the meaning set forth in the preamble hereto.

"Eletson" has the meaning set forth in the preamble hereto.

"Eletson Directors" has the meaning set forth in Section 3.3.

"Eletson Settlement Balance" means an amount equal to (i) the Final Eletson Settlement Amount (as defined in the Contribution Agreement) multiplied by 40%; minus (ii) cumulative distributions to the Common Members pursuant to Section 8.1(a)(vi).

"Equity Interests" means shares of the capital stock, partnership interests, membership interests, beneficial interests in a trust, or other equity interests in a Person or any securities convertible or exercisable into or exchangeable for rights to purchase any such equity interests, including warrants or options.

"Fairness Opinion" means with respect to any transaction, an opinion of an internationally recognized independent financial advisor with specific expertise in the valuation of shipping assets engaged by a Drag-Along Representative with the consent of a Majority-In-Interest, such consent not to be unreasonably withheld, that, subject to customary qualifications and exceptions, the aggregate consideration to be received by the Company in such transaction is fair to the Company from a financial point of view.

"First Amended and Restated LLC Agreement" has the meaning set forth in the Background.

"Fiscal Quarter" means each three month period ending March 31, June 30, September 30 and December 31.

"Fiscal Year" has the meaning set forth in Section 1.6.

"Flow-Through Entity" has the meaning set forth in Section 10.5(b).

"Fundamental Actions" has the meaning set forth in Section 3.2.

"Funded Commitment" means, with respect to any Class A Preferred Member, the aggregate amount of Capital Contributions made by such Class A Preferred Member pursuant to Section 1.7(a) and (b), including the initial Capital Contributions set forth on Schedule II hereto.

"Funded Commitment Percentage" means with respect to any Class A Preferred Member, a percentage expressed as a fraction, (i) the numerator of which is equal to such Class A Preferred Member's Funded Commitment and (ii) the denominator is equal to $125 million.

"GAAP" means U.S. generally accepted accounting principles, as in effect from time to time.

"Group Company" means the Company and each Subsidiary.

"Gross Asset Value" means, with respect to any property, such property's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any property contributed by a Member to the Company shall be the fair market value of such property as reasonably determined by the Board;

(b) The Gross Asset Value of all properties shall be adjusted to equal their respective fair market values as determined by a Members representing 80% of the outstanding Units (excluding the Special Member Unit) in connection with (i) the acquisition of an interest in the Company by any new or existing Member in exchange for more than a *de minimis* capital contribution to the Company, (ii) the distribution by the Company to a Member of more than a *de minimis* amount of property as consideration for an interest in the Company, (iii) the grant of an interest in the Company, as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a Member capacity or by a new Member acting in a Member capacity or in anticipation of being a Member, or (iv) the liquidation of the Company within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g)(1) (other than pursuant to Code Section 708(b)(1)(B)); *provided, however,* that adjustment pursuant to clauses (i), (ii) and (iii) above shall be made only if the Board reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(c) The Gross Asset Value of property distributed to a Member shall be the fair market value of such property on the date of distribution as reasonably determined by the Board;

(d) The Gross Asset Value of all property shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such property pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m) and clause (vi) of the definition of Profits and Losses; *provided, however*, Gross Asset Value shall not be adjusted pursuant to this clause (d) to the extent the Board determines that an adjustment pursuant to clause (b) hereof is necessary or appropriate in connection with the transaction that would otherwise result in an adjustment pursuant to this clause (d); and

(e) If the Gross Asset Value of property has been determined or adjusted pursuant to clauses (a), (b) or (d) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such property for purposes of computing Profits and Losses and other items allocated pursuant to Section 7.3.

"Independent Third Party" means, with respect to any Member, any Person who is not an Affiliate of such Member.

"Ineligible Person" means any Person (a) that is an operating company or that directly controls any operating company that transports by water LPG, ethylene, petrochemical gases or ammonia, (b) with whom any Group Company is prohibited or restricted in engaging in transactions or exporting goods or services to under Applicable Laws, including, without limitation, a Person that is a resident of, domiciled in, or organized under the laws of a Prohibited Country or (c) who is a Prohibited Person.

"Initial Blackstone Commitment Period" means the period beginning on the Initial Closing Date and ending on the earlier of (i) the date on which BX, Blackstone Family and BTO SMD, collectively, have made aggregate Capital Contributions of at least $125 million and (ii) September 30, 2016; provided that, if the Company has entered into a binding newbuild construction contract or purchase agreement relating to an Approved Vessel, which has been approved by the Board in accordance with Section 3.2, and such newbuild Approved Vessel has not been delivered to the Company as of September 30, 2016, the September 30, 2016 date shall be extended until the earlier of (x) the date on which such Approved Vessel is delivered to the Company and (y) December 31, 2016.

"Initial Closing Date" has the meaning set forth in the Background.

"Initial Public Offering" has the meaning set forth in Section 10.6(a).

"Initiating Members" has the meaning set forth in Section 10.7.

"LPG" has the meaning set forth in Section 1.4.

"Lien" means any mortgage, pledge, security interest, option, right of first offer, encumbrance or other restriction or limitation of any nature whatsoever.

"Liquidity Proceeds" means, all available cash and cash equivalents of the Group Companies other than cash and cash equivalents derived from Operating Proceeds, determined on a consolidated basis in accordance with GAAP, including, without limitation, net proceeds derived from the disposition of any Vessel and proceeds of refund or any refund guaranty received by the Group Companies pursuant to any newbuild contract.

"Majority-in-Interest" means, with respect to all Members, Members holding a majority of outstanding Units (excluding the Special Member Unit), and, with respect to a particular Class, Members holding a majority of the outstanding Units of such Class.

"Majority-in-Interest of the Preferred Units" means Preferred Members holding a majority of outstanding Preferred Units.

"Make Whole Premium" means, with respect to each Class B-2 Preferred Unit, the excess, if any, of (i) the product of 1.5 multiplied by the aggregate amount of Class B-2 Capital Contributions made in respect of such Class B-2 Preferred Unit minus (ii) all prior distributions made in respect of such Class B-2 Preferred Unit pursuant to Section 8.1 and all prior redemption payments made in respect of such Class B-2 Preferred Unit pursuant to Section 1.9 (including those being made as of the date of redemption).

"Management Agreements" means those certain ship management agreements set forth on Schedule III hereto and each other ship management agreement entered into by a Group Company with respect to a Vessel.

"Manager" means Eletson Corporation or such other ship manager as may be engaged from time to time by the Board to provide technical management in respect of the Vessels.

"Mandatory Redemption Event" means (i) a Sale of the Company, including a Drag Along Transaction, (ii) any sale of Equity Interests of the Company pursuant to an effective registration statement under the Securities Act filed with the Securities and Exchange Commission or under similar laws relating to publicly registered offerings under another jurisdiction, (iii) the occurrence of a Roll-Up Transaction, and (iii) a liquidation, dissolution or winding up of the Company pursuant to Article XI.

"Mathraki" means the Vessel named Mathraki (f/k/a LPG/C Mado prior to its acquisition by a Subsidiary of the Company).

"Maturity Date" has the meaning set forth in Section 1.9.

"Measurement Period" means (i) the period commencing on the Initial Closing Date and ending on the initial Operating Proceeds Measurement Date; and (ii) thereafter, the period between each two subsequent Operating Proceeds Measurement Dates.

"Members" means the Class A Preferred Members, Class B Preferred Members, Common Members and each other Person admitted as a Member for so long as such Person

remains a Member; *provided*, *however* that the Special Member shall only be deemed to be a Member for purposes of Section 2.4 (*Register*), Section 4.1 (*No Participation in Management, etc.*), Section 4.3 (*Bankruptcy, Dissolution or Withdrawal of a Member*), Section 8.1 (*Distributions*), Section 8.2 (*General Distribution Provisions*), Section 8.4 (*Distributions in Kind*), Section 9.2 (*Tax Information*), Section 10.2(e) (*Conditions to Transfer*), Section 10.2(d) (*Exit Drag-Along Transaction*), Section 10.5 (*Additional Restrictions on Transfer*), Section 12.2 (*Notices*), Section 12.3 (*Confidentiality*) and Section 12.15 (*Equitable Rights*).

"Member Loan" has the meaning set forth in Section 1.7(g).

"Membership Interest" means the entire interest of a Member in the Company, including the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all of the terms and conditions of this Agreement.

"Minimum Class A Preferred Return" means, for any Fiscal Quarter, an amount equal to cash interest for such Fiscal Quarter on the Accrued Value at a rate of 8% per annum, compounded quarterly.

"Minimum Liquidity and Working Capital Call" has the meaning set forth in Section 1.7(c).

"Newco" has the meaning set forth in Section 10.6(a).

"New Units" has the meaning set forth in Section 2.1.

"Non-Class B-2 Period" means any time other than during the Class B-2 Period.

"Non-Funding Member" has the meaning set forth in Section 1.7(e).

"Non-Permitted Member" has the meaning set forth in Section 10.5(c).

"OFAC License" has the meaning set forth in Schedule IV.

"Offered Units" has the meaning set forth in Section 10.2(c)(i).

"Offering Member" has the meaning set forth in Section 10.2(c)(i).

"Offering Member Notice" has the meaning set forth in Section 10.2(c)(ii).

"Officers" has the meaning set forth in Section 3.1(b).

"Operating Proceeds" means, with respect to any Measurement Period:

(a) net income of the Group Companies from continuing operations determined on a consolidated basis in accordance with GAAP; plus

(b) without duplication and to the extent deducted in calculating net income (i) interest expense, (ii) amortization of lender and placement fees incurred in

connection with vessel financing facilities, (iii) depreciation and amortization and other similar non-cash expenses and (iv) any reduction in working capital; less

(c) (i) increases in working capital, (ii) without duplication and to the extent not deducted in calculating net income, lender and placement fees incurred in connection with vessel financing facilities, (iii) maintenance capital expenditures, including capital expenditures for drydock, surveys and other corporate purposes, but excluding capital expenditures for acquisitions of newbuild and second-hand vessels and (iv) cash paid for interest and principal on indebtedness.

"Operating Proceeds Measurement Date" means (i) the last day of each Fiscal Quarter, (ii) each other date which the Board sets as a measurement date for the distribution of Operating Proceeds, which date shall be no more than 10 days prior to the date of any distribution of Operating Proceeds and (iii) the date which is 10 days prior to each date on which Liquidity Proceeds are distributed.

"Outside Commitment Date" means December 31, 2019.

"Parent Party" has the meaning set forth in Section 5.3(g).

"Participating Sellers" has the meaning set forth in Section 10.2(d)(vii).

"Partner Nonrecourse Debt Minimum Gain" has the meaning ascribed to such term in Treasury Regulation Section 1.704-2(i).

"Partnership Minimum Gain" has the meaning ascribed to such term in Treasury Regulation Section 1.704-2(d).

"Partnership Representative" has the meaning set forth in Section 7.5(g).

"Per Offered Unit Purchase Price" has the meaning set forth in Section 10.2(c).

"Percentage Interest" means, with respect to any Common Member or Preferred Member, a fraction, expressed as a percentage, (i) the numerator of which is the number of Units held by such Member and (ii) the denominator of which is the total number of Units held by all Common Members and Preferred Members.

"Period" means, for the first Period, the period commencing on the Initial Closing Date and ending on the next Adjustment Date; and for each subsequent Period, means the period commencing on the day after an Adjustment Date and ending on the next Adjustment Date.

"Permitted Indebtedness" means (a) the incurrence by the Company of indebtedness represented by capitalized lease obligations, mortgage financings, purchase money obligations, sale leaseback transactions or other indebtedness ("***Debt***") incurred or assumed in connection with the acquisition or development of real or personal, movable or immovable, property or assets, in each case, incurred (i) for the purpose of financing or refinancing all or any part of the purchase price, lease expense or cost of construction or improvement of property, plant or equipment used in any Group Company business (including any reasonable related fees or

expenses incurred in connection with such acquisition or development); *provided* that the acquisition of such property or assets was not of the type required to be approved pursuant to Section 3.2 (b) the incurrence by the Company of Debt under hedging agreements or fuel hedging agreements which are entered into (i) consistent with a hedging program approved by the Board and (ii) for non-speculative purposes in the ordinary course of business and in order to hedge anticipated commodity price fluctuations, (c) the incurrence by the Company of Debt in respect of workers' compensation and claims arising under similar legislation, or pursuant to self-insurance obligations other than in connection with the borrowing of money or the obtaining of advances or credit financing on behalf of the Group Companies, (d) the incurrence by the Company of Debt arising from (i) bankers' acceptances, performance, surety, judgment, appeal or similar bonds, instruments or obligations and (ii) completion guarantees provided or letters of credit obtained by the Company in the ordinary course of business, in each case, not to exceed $5.0 million, (e) the incurrence by the Company of Debt in relation to (i) any expenditures which are confirmed to be recoverable from insurance on such Vessel; (ii) indebtedness of any Group Company to any other Group Company; and (iii) indebtedness of any Group Company existing on the Initial Closing Date; *provided, however* that Permitted Indebtedness shall not exceed $5.0 million at any time.

"Permitted Liens" means

(a) Liens on assets acquired after the Initial Closing Date (whether by purchase, construction or otherwise) by the Company or any of its Subsidiaries, which Liens were created solely for the purpose of securing indebtedness representing, or incurred to finance, refinance or refund, the cost (including the cost of construction) of such assets, *provided, however,* that the acquisition of such assets is not otherwise prohibited by the terms of this Agreement, including for failure to obtain any consent required under Section 3.2;

(b) Liens on assets acquired after the Initial Closing Date by the Company or any of its Subsidiaries so long as (i) the acquisition of such assets is not otherwise prohibited by the terms of this Agreement, including for failure to obtain any consent required under Section 3.2 and (ii) each of such Liens existed on such assets before the time of their acquisition and were not created by the Company or any of its Subsidiaries in anticipation thereof;

(c) Liens on any asset of any Person that becomes or became a Subsidiary of the Company or its Subsidiary after the Initial Closing Date so long as (i) the acquisition or creation of such Person by the Company or its Subsidiary is not otherwise prohibited by the terms of this Agreement, including for failure to obtain any consent required under Section 3.2 and (ii) such Liens are in existence at the time such Person becomes a Subsidiary of the Company and were not created by the Company or any of its Subsidiaries in anticipation thereof;

(d) Liens securing government-related obligations of the Company or its Subsidiaries or to secure the performance of statutory obligations;

(e) Liens for taxes, assessments or other governmental charges or levies not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings;

(f) Liens of carriers, warehousemen, mechanics, materialmen and landlords incurred in the ordinary course of business for sums which are not due or are being diligently contested in good faith by appropriate proceedings;

(g) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance or other forms of governmental insurance, social security or benefits;

(h) Liens for current masters', officers' and crew's wages and salvage including contract salvage;

(i) Liens arising by operation of law as the result of the furnishing of necessaries for any Vessel so long as the same are discharged in the ordinary course of business or are being diligently contested in good faith by appropriate proceedings;

(j) Liens on Vessels that (A) secure obligations covered (or reasonably are expected to be covered) by insurance; (B) were incurred in the course of or incidental to trading such Vessel or in connection with maintenance, repairs or other work to such Vessel (subject to any approvals for such maintenance, repairs or other work required pursuant to Section 3.2); or (C) were incurred in connection with work to such Vessel that is required to be performed pursuant to applicable law, rule, regulation or order (subject to any approvals for such work required pursuant to Section 3.2); *provided* that, in each case described in this clause (j), such Liens are (x) discharged in the ordinary course of business or (y) being diligently contested in good faith by appropriate proceedings;

(k) Liens arising out of the existence of judgments or awards in respect of which any Group Company shall in good faith be prosecuting an appeal or proceedings for review or in respect of which there shall have been secured a subsisting stay of execution pending such appeal or proceedings;

(l) Liens on Vessels for prepaid charter hire; and

(m) imperfections of title, licenses or other Liens, if any, that do not materially impair the continued use and operation of such asset (as presently or contemplated to be used and operated by any Group Company).

"Permitted Transferee" shall mean, with respect to a Member: (a) a Person directly or indirectly owning or holding more than fifty percent (50%) of the Equity Interests in such Member, (b) a Person in which such Member directly or indirectly owns or holds more than fifty percent (50%) of the Equity Interests of such Member, (c) in the case of BX, Blackstone Family or BTO SMD, any Person under investment management by the Blackstone Group, L.P. or any of its subsidiaries and (d) a Person that Controls, is Controlled by or under Common Control

with such Member or any Person identified in clauses (a), (b) or (c); provided that an Ineligible Person shall under no circumstances be a Permitted Transferee.

"Person" means any individual or entity, including a corporation, partnership, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated association, government or governmental agency or authority.

"PIK Preferred Return" means, for any Measurement Period, an amount equal to interest for such period on the Accrued Value at a rate of 5% per annum, compounded quarterly.

"PIK Amount" means, with respect to each Fiscal Quarter ending on or prior to December 31, 2015, an amount equal to the excess, if any, of (i) the PIK Preferred Return for such Fiscal Quarter minus (ii) an amount equal to (A) all distributions of Operating Proceeds for such Fiscal Quarter (including amounts distributed with respect to the period preceding any Operating Proceeds Measurement Date during such Fiscal Quarter) to the Class A Preferred Members minus (B) an amount equal to interest on the Accrued Value for such Fiscal Quarter at the Applicable Interest Rate (as in effect for each such Fiscal Quarter). For the avoidance of doubt, solely for purposes of computing PIK Amount, distributions of Eletson Settlement Balance amounts to Common Members pursuant to Section 8.1(a)(vi) shall be considered distributions to the Class A Preferred Members.

"Pre-Delivery Unpaid PIK Amount" means, as of any date, an amount equal to (i) the sum of 50% of the PIK Amount for all prior Fiscal Quarters (including the first Fiscal Quarter in the case of the first Operating Proceeds Measurement Date) minus (ii) cumulative distributions to the Class A Preferred Members pursuant to Section 8.1(a)(v)(A).

"Preemptive Right Notice Period" has the meaning set forth in Section 2.3.

"Preferred Cash Return" has the meaning set forth in Section 8.1.

"Preferred Members" means the Class A Preferred Members and the Class B Preferred Members, and shall in each case include their successors and permitted assigns to the extent admitted to the Company as Preferred Members in accordance with the terms hereof, in their capacities as members of the Company.

"Preferred Percentage Interest" means, with respect to any Member, a fraction, expressed as a percentage, (i) the numerator of which is the number of Class A Preferred Units held by such Member and (ii) the denominator of which is the total number of Class A Preferred Units held by all Members.

"Preferred Target Percentage" means, as of any date of determination, a percentage equal to:

(a) Until such time as cumulative distributions pursuant to Sections 8.1(b)(ix) – 8.1(b)(x) exceed $450 million: 49%

(b) From such time as cumulative distributions pursuant to exceed $450 million but are less than $650 million, a percentage equal to 49% minus (i) 14% multiplied by

a fraction, Sections 8.1(b)(ix) – 8.1(b)(x) (A) the numerator of which is equal to cumulative distributions pursuant to Sections 8.1(b)(ix) – 8.1(b)(x) minus $450 million and (B) the denominator of which is $200 million.

(c) From such time as cumulative distributions pursuant to Sections 8.1(b)(ix) – 8.1(b)(x) equal or exceed $650 million: 35%.

"Preferred Units" means the Class A Preferred Units and the Class B Preferred Units.

"Proceeding" has the meaning set forth in Section 5.3(a).

"Profits" and "Losses" means, for each Period, an amount equal to the Company's taxable income or loss for such Period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(a) any income of the Company that is exempt from U.S. federal income tax and not otherwise taken into account in computing Profits and Losses shall be added to such taxable income or loss;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses shall be subtracted from such taxable income or loss;

(c) in the event the Gross Asset Value of any Company asset is adjusted pursuant to clause (b) or clause (d) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for U.S. federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Period;

(f) to the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases basis of the asset) or loss (if the adjustment

decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits and Losses; and

(g) notwithstanding any other provisions hereof, any items which are specially allocated pursuant to Sections 7.5(c)-(f) hereof shall not be taken into account in computing Profit or Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Section 7.5 shall be determined by applying rules analogous to those set forth in subparagraphs (i) through (vi) above.

"Prohibited Country" means (a) any state, country or jurisdiction which is subject to any United Nations Security Council Resolution, European Union Decision, United States sanctions or other Applicable Law which would have the effect of prohibiting the sale, lease, charter, or voyage of any Vessel to or from such country or otherwise cause the Company to be in contravention of any Applicable Law to which the Company is subject; or (b) any country to which voyages are not covered under the insurances required to be maintained by the Company. The Members agree to designate, without limitation, Cuba, Iran, Syria, Sudan and North Korea as Prohibited Countries.

"Prohibited Person" means any Person: (a) with whom the Company or any Member is prohibited or restricted in engaging in transactions or exporting goods or services to under Applicable Law; (b) who is a resident of, or organized under the laws of or doing business in any Prohibited Country; (c) who is designated on any U.N. Security Council Resolution or any European Union or United States list, order, or other published designation of terrorists, narcotics traffickers, proliferators of weapons of mass destruction or other lists of barred or restricted entities or individuals including without limitation the U.S. Treasury Department's Specially Designated Nationals and Blocked Persons List.

"Proposed Budget" has the meaning set forth in Section 3.5.

"Proprietary Information" means information relating to any Group Company, their Subsidiaries, their assets or operations, or relating to or provided pursuant to the Transaction Documents (including the terms thereof), whether furnished before or after the Initial Closing Date and regardless of the manner in which it is furnished; provided, however, Proprietary Information will not include information which (a) is or becomes generally available to the public (other than (x) as a result of a disclosure by such Person or such Person's Representatives or any other Person who directly or indirectly receives such information from such Person or such Person's Representatives or (y) in violation of any confidentiality agreement known to such Person), (b) is or becomes available to such Person on a non-confidential basis from a source which is entitled to disclose it to such Person, or (c) is independently developed by such Person without reference to the Proprietary Information.

"Purchase Price" has the meaning set forth in Section 10.8(b).

"Purchasing Member" has the meaning set forth in Section 10.2(c).

"Qualifying IPO" means the sale, in a firm commitment underwritten public offering led by an internationally recognized underwriting firm, of Units (or common stock of the Company or a Newco) sold to the public and listed on any recognized stock exchange.

"Receiving Member" has the meaning set forth in Section 10.8(b).

"Redemption" has the meaning set forth in Section 1.9.

"Redemption Notice" has the meaning set forth in Section 1.9.

"Register" has the meaning set forth in Section 2.4 and attached hereto as Schedule II.

"Registrable Securities" means any class of Equity Interests of Newco.

"Regulatory Allocations" has the meaning set forth in Section 7.5(i).

"Representatives" means, (i) in the case of Schedule IV, as to any Person, such Person's officers, directors and employees; and (ii) in all other cases in this Agreement, as to any Person, such Person's officers, directors, employees, members, partners, investors, agents and Affiliates.

"Restricted Cash" means cash and cash equivalents that are not freely useable by the Group Companies because they are subject to restrictions or limitations on use or distribution by Applicable Law or contract.

"ROFO Notice Period" has the meaning set forth in Section 10.2(c)(iii).

"ROFO Offer Notice" has the meaning set forth in Section 10.2(c)(iii).

"Rollover Budget" has the meaning set forth in Section 3.5.

"Roll-Up Transaction" has the meaning set forth in Section 10.6(a).

"Sale of the Company" means (a) a transaction or series of related transactions in which a Person or group of Persons (in each case, excluding any Affiliate of a pre-transaction Member), acquires Equity Interests representing more than fifty percent of the outstanding voting power of the outstanding Equity Interests, (b) any direct or indirect acquisition of the Company by means of merger, consolidation, business combination, exchange or contribution of equity, or other form of entity reorganization in one or a series of related transactions with or into another entity (which is not an Affiliate of a Member in which outstanding Equity Interests are exchanged for cash, securities or other consideration and, immediately following such transaction, a Person that is not a Member immediately prior to such transaction owns directly or indirectly Securities or other equity interests representing more than fifty percent (50%) of the outstanding voting power of the surviving entity or its direct or indirect parent holding entity, or (c) a direct or indirect sale, transfer or other disposition (other than a pledge or grant of a security interest to one or more bona fide lenders) of all or substantially all of the consolidated assets of the Company (other than to a wholly owned Subsidiary or parent of the Company or to an Affiliate of pre-transaction Member.

"Second Amended and Restated LLC Agreement" has the meaning set forth in the Background.

"Second Blackstone Commitment Period" means the period beginning on the Second Restatement Effective Date and ending on the earlier of (i) the date on which BX, Blackstone Family and BTO SMD, collectively, have made aggregate Class B-1 Capital Contributions and Class B-2 Capital Contributions of at least $23,441,430 million and (ii) the Outside Commitment Date.

"Second Restatement Effective Date" means December 21, 2017.

"Second Tranche Funding Condition" means, for any date of determination, as determined by the BX Directors in their good faith, reasonable discretion after consulting with the Eletson Directors, any of the following:

(i) the consolidated cash balance of the Group Companies is less than $5.0 million (excluding any Restricted Cash) as of such date;

(ii) consolidated cash balance for the Group Companies is projected to be less than $5.0 million (excluding Restricted Cash) during any day during the fifteen (15) day period subsequent to such date, after giving effect to (A) all scheduled payments of principal and interest due during such period under the Credit Facilities and any other loan facilities of the Company, and (B) any scheduled payments or other obligations due during such period in respect of any lease, acquisition or construction of new Vessels, in each case as specified by written binding documentation relating thereto; or

(iii) any Group Company is in breach of or is otherwise not in compliance with any covenant or other material obligation under any Credit Facility or any sale leaseback arrangement with respect to a Vessel.

"Securities" means shares of capital stock, partnership interests, limited liability company interests, warrants, options, bonds, notes, debentures and other equity and debt securities of whatever kind of any Person, whether readily marketable or not.

"Securities Act" means the Securities Act of 1933, as amended from time to time.

"Sending Member" has the meaning set forth in Section 10.8(b).

"Shipcos" has the meaning set forth in the Background.

"Shortfall Amount" has the meaning set forth in Section 1.7(e).

"SMS" has the meaning set forth in Section 3.1(e).

"Special Distribution Amount" means $3,662,809.63.

"Special Member" has the meaning set forth in the preamble hereto.

"Special Member Unit" has the meaning set forth in Section 2.1.

"Specified Event" means (a) the failure of the Company to distribute to the Class A Preferred Members pursuant to Section 8.1(a)(vi) an amount at least equal to the Minimum Class A Preferred Return for 3 consecutive Fiscal Quarters; (b) the breach of any covenant set forth in Section 12.9, or (c) during the Class B-2 Period.

"Subsequent Capital Call" has the meaning set forth in Section 1.7(d).

"Substantially Funded" means BX, Blackstone Family and BTO SMD have contributed sufficient amounts to fund (A) the Initial Cash Contribution (as defined in the Contribution Agreement) plus (B) the lesser of (i) all amounts payable with respect to Approved Vessels that were budgeted to be funded from the Initial BX Capital Commitment at the time such Approved Vessels were approved by the Board and (ii) aggregate amounts payable under newbuild contracts relating to Approved Vessels.

"Subsidiary" shall mean any Person that is Controlled, either directly or indirectly, by the Company, including each Shipco.

"Tax Matters Partner" has the meaning set forth in Section 7.5(g).

"Term" has the meaning set forth in Section 1.5.

"Third Party Representative" means any Person that is authorized by a Group Company to act in interactions with Government Officials on the Group Company's behalf, or that otherwise is authorized by a Group Company to represent the Group Company as its agent in dealings with customers or other commercial counterparties.

"Trade Compliance Program" means a compliance program of the type and scope described in Exhibit A hereto.

"Transaction Documents" means this Agreement, the Contribution Agreement, the Management Agreements and the Financial Services Agreements (as defined in the Contribution Agreement).

"Transfer" means to (a) directly sell, assign, convey, transfer, pledge, mortgage, encumber, hypothecate or otherwise dispose of (including the creation of puts, calls, collars and other derivative securities related to such Units or portion of a Membership Interest) any Units or portion of a Membership Interest, or (b) indirectly sell, assign, convey, transfer, pledge, mortgage, encumber, hypothecate or otherwise dispose of (including the creation of puts, calls, collars and other derivative securities related to such Units or portion of a Membership Interest) any Units or portion of a Membership Interest by way of a change in control of any Member.

"Transferee" means a Person that has validly acquired a Membership Interest in the Company from a Member pursuant to a Transfer permitted under the terms of this Agreement but who has not become a Member of the Company pursuant to the terms of this Agreement.

"Treasury Regulations" means the regulations of the U.S. Treasury Department issued pursuant to the Code, as such regulations may be amended from time to time (including the corresponding portions of succeeding regulations).

"Treaty" has the meaning set forth in Section 12.11(b).

"Units" means any Membership Interest (or portion thereof) that the Company has issued on or prior to the date hereof or may hereafter issue and designate as a Unit, including the Preferred Units, the Common Units and any New Units.

"Unpaid Cash Preferred Return Balance" means, as of any Operating Proceeds Measurement Date, the difference between (i) the sum of aggregate Preferred Cash Return distributable for all prior periods, minus (ii) cumulative distributions to the Class A Preferred Members pursuant to Sections 8.1(a)(iv), 8.1(a)(vi) and 8.1(b)(vi).

"Unpaid Class B-1 Preferred Return Balance" means, as of any date, (i) interest at a rate of 13% per annum, compounded quarterly, on the aggregate Unpaid Class B-1 Capital Contributions minus (ii) all distributions to the Class B-1 Preferred Members pursuant to Sections 8.1(a)(ii) and 8.1(b)(iv).

"Unpaid Class B-2 Preferred Return Balance" means, as of any date, (i) interest at a rate of 13% per annum, compounded quarterly, on the aggregate Unpaid Class B-2 Capital Contributions minus (ii) all distributions to the Class B-2 Preferred Members pursuant to Sections 8.1(a)(iii) and Section 8.1(b)(ii).

"Unpaid Class B-1 Capital Contributions" means, as of any date, (i) the aggregate amount of Class B-1 Capital Contributions minus (ii) all distributions to the Class B-1 Preferred Members pursuant to Sections 8.1(a)(i) and 8.1(b)(iv).

"Unpaid Class B-2 Capital Contributions" means, as of any date, (i) the aggregate amount of Class B-2 Capital Contributions minus (ii) all distributions to the Class B-2 Preferred Members pursuant to Sections 8.1(a)(i) and 8.1(b)(i).

"Unpaid PIK Amount" means, as of any date, an amount equal to (i) the aggregate amount of all PIK Amounts for all prior Fiscal Quarters minus (ii) cumulative distributions to the Class A Preferred Members pursuant to Sections 8.1(a)(v) and 8.1(b)(vii).

"Vessel" means the Contributed Vessels, Mathraki, Othoni, Astipalea, Paros, Kithnos, Dilos, Kithira, Antikithira, Ithaki, Kalolimnos and each other vessel acquired by a Group Company subsequent to the Effective Date.

"Waived ROFO Transfer Period" has the meaning set forth in Section 10.2(c).

1.2 Continuation; Amendment and Restatement. The Company was formed as a limited liability company under the Act by the filing of the Certificate of Formation by Lascarina J. Karastamati acting as an authorized person as contemplated by the Act. The Members hereby acknowledge and agree that such authorized person's (in such Person's capacity as the authorized person) actions prior to the effectiveness of this Agreement are ratified and approved

and such authorized person shall have no further participation in the activities of the Company. The Members hereby agree to continue the Company as a limited liability company under the Act, upon the terms and subject to the conditions set forth in this Agreement. The Second Amended and Restated LLC Agreement is hereby amended and restated in its entirety by this Agreement.

1.3 Name and Registered Office.

(a) Name. The name of the Company is Eletson Gas LLC. No value shall be placed upon the name of the Company or the goodwill attached thereto for the purpose of determining the value of any Member's Capital Account or interest in (or right to distributions from) the Company.

(b) Registered Office. The registered office of the Company in the Republic of the Marshall Islands is located at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960, and the registered agent for service of process on the Company at such address is the Trust Company of the Marshall Islands, Inc. At any time, the Company may designate an additional registered agent and/or registered office but the Trust Company of the Marshall Islands, Inc. shall remain to the extent required by the Act.

1.4 Purposes. The purposes of the Company are to (a) directly or indirectly through one or more Subsidiaries, acquire, finance, own, operate and dispose of (i) the Vessels, including owning and holding the outstanding Equity Interests of each Shipco which collectively will directly own all of the Vessels, (ii) additional liquefied petroleum gas ("***LPG***") vessels and related maritime assets, (b) trade the Company's fleet of vessels within a global enterprise and (c) undertake activities reasonably related to clauses (a) and (b) above. In pursuit of the purposes described in the preceding sentence (without limiting the generality of the scope thereof), the Company will be authorized to: (a) exercise the Company's rights with respect to each Subsidiary, the Vessels and each other vessel acquired by the Company, (b) exercise all rights of the Company and each other Subsidiary under the Transaction Documents, and (c) enter into, deliver and perform all such contracts, agreements, guaranties and other undertakings, and to engage in all such activities and transactions as the Board deems necessary or advisable for or incidental to any of the foregoing, including, without limitation, the ownership, operation and disposition of the Vessels, including any equity or debt financing or refinancing of the Company or the Vessels (subject in each instance to Section 3.2. The Company will not change the nature or scope of the Company's business or operations nor conduct or engage in any business outside its existing business as presently conducted or as contemplated herein without the consent of a Majority-in-Interest of each Class of Members.

1.5 Term. The term of the Company (the "***Term***") commenced on April 12, 2013 and shall continue until the Company is dissolved in accordance with this Agreement. Notwithstanding the expiration of the Term, the Company shall continue in existence as a separate legal entity until cancellation of the Certificate of Formation of the Company in accordance with Section 11.5.

1.6 Fiscal Year. For financial accounting purposes, the fiscal year of the Company shall end on the 31st day of December in each calendar year (the "***Fiscal Year***").

1.7 Capital.

(a) Capital Contributions. As of the Effective Date, each of the Members has made the Capital Contributions to the Company set forth on the Register.

(b) Funding of Blackstone Commitment.

(i) Funding of Initial Blackstone Commitment. Subject to Section 3.2, prior to the expiration of the Initial Blackstone Commitment Period, BX, Blackstone Family and BTO SMD shall make Capital Contributions at such times and in such amounts as at least two Directors deem that capital is required for the Company or its Subsidiaries for the purpose of committing to or making timely payments towards the completion of the acquisition of the Approved Vessels when due. Each Capital Contribution pursuant to this Section 1.7(b)(i) will be made on 15 Business Days prior written notice to BX, Blackstone Family and BTO SMD.

(ii) Funding of Second Blackstone Commitment. Subject to Section 3.2 and the conditions set forth in the Equity Commitment Letter, prior to the expiration of the Second Blackstone Commitment Period, BX, Blackstone Family and BTO SMD shall make Class B Capital Contributions at such times and in such amounts as the Eletson Directors, by written resolution, may request; provided that each such request shall be for a Class B Capital Contribution of at least $1,000,000 and in no case shall aggregate Class B Capital Contributions be required to exceed the amount of the Second BX Capital Commitment; provided, however that in the event of a Second Tranche Funding Condition, the BX Directors, by written resolution, may request funding of Class B Capital Contributions without the approval of the Eletson Directors. Each Class B Capital Contribution pursuant to this Section 1.7(b)(ii) will be made on at least 10 Business Days prior written notice to BX, Blackstone Family, BTO SMD and the Board. BX, Blackstone Family and BTO SMD shall be issued (A) Class B-1 Preferred Units at a price per Unit of $100.00 for the first $8,441,430 of Class B Capital Contributions and (b) Class B-2 Preferred Units at a price per Unit of $100.00 for any Class B Capital Contribution in excess of $8,441,430 of Class B Capital Contributions.

(c) Funding Minimum Capital Needs. At such times as at least the two Directors determine in their reasonable good faith judgment that the Group Companies have insufficient available cash and cash equivalents (including the Cash Reserve and amounts available to the Company through available debt financings) to fund the Group Company's minimum liquidity and working capital needs in respect of (i) payments necessary to ensure proper crewing of the Vessels, (ii) minimum debt maintenance (interest and amortization payments then due or scheduled to be due within the following 90 days), (iii) operating expenses of the Vessels necessary for the Group

Companies to perform their charter or contract of affreightment obligations to third parties in respect of the Vessels, (iv) insurance of the Vessels, (v) maintenance of the Vessels in operating condition consistent with class requirements, and (vi) payments or other financings, to the extent that the Company's failure to make such payments or other financings would have, or would reasonably be likely to have, a material adverse effect on the Group Companies, taken as a whole, such Directors may require (a "***Minimum Liquidity and Working Capital Call***"), upon 30 days prior written notice that each Member make additional Capital Contributions; *provided*, *however*, upon and during the continuance of an Specified Event, a Minimum Liquidity and Working Capital Call shall require the approval of at least one BX Director. The amount of each Minimum Liquidity and Working Capital Call shall be allocated pro rata in proportion to Percentage Interests among the Members and shall not exceed (i) the excess, if any, of the Cash Reserve minus all available cash on hand and cash equivalents held by the Group Companies as of such date and (ii) $15 million in any rolling twelve month period. For the avoidance of doubt, any Capital Contributions made by BX, Blackstone Family and BTO SMD in respect of this Section 1.7(c) shall not constitute Funded Commitments.

(d) Funding of Capital Calls Subsequent to Blackstone Commitment Period. Subject to Section 3.2, following the Blackstone Commitment Period, at such times as the Board deems that capital is required for the purpose of committing to or completing the acquisition of new vessels that have been approved by the Board or for any other purpose approved by the Eletson Directors and the BX Directors, the Board by unanimous approval may request each of the Members, upon 15 Business Days prior written notice, to make a Capital Contribution to the Company ("***Subsequent Capital Call***"). The amount of each Capital Contribution to be contributed pursuant to a Subsequent Capital Call shall be determined by the Board and shall be allocated among the Members pro rata in accordance with their respective Percentage Interests.

(e) Shortfall Amount. To the extent a Member does not make Capital Contributions (a "***Non-Funding Member***") when due in an amount sufficient to meet such Member's obligation with respect to a Minimum Liquidity and Working Capital Call or a Subsequent Capital Call, then the Board may request, pursuant to a further Minimum Liquidity and Working Capital Call or Subsequent Capital Call, that the other Members fund all or a part of the unfunded portion of such Capital Contributions ("***Shortfall Amount***") up to each Member's pro rata share of such Shortfall Amount (based upon Percentage Interests). To the extent that a Member fails to fund its pro rata portion of a Shortfall Amount, such amount will be treated as a Shortfall Amount with respect to such Member. For the avoidance of doubt, in no event shall a Member have the obligation to fund (x) such Member's own pro rata share of a Minimum Liquidity and Working Capital Call or Subsequent Capital Call or (y) any portion of a Shortfall Amount on behalf of another Member. To the extent such other Members do not elect to fund all of such Shortfall Amount, the Board may (1) elect to permit the Members to make additional Capital Contributions to fund such Shortfall Amount or (2) in the event the Members fail to satisfy such Shortfall Amount, admit one or more new Members to the Company in order to obtain sufficient Capital Contributions for the remaining

unfunded portion of the Shortfall Amount; provided that such new Member may not be an Ineligible Person.

(f) Additional Common Units. Each Member making a Capital Contribution with respect to a Minimum Liquidity and Working Capital Call or a Subsequent Capital Call (including a newly admitted Member) pursuant to Section 1.7(c) or (d), respectively, shall be issued additional Common Units at a price per Common Unit equal to the lesser of (i) the fair market value per Common Unit as determined by an Appraiser and (ii) $10.00 per Common Unit; provided, however, that in respect of all Common Units issued in respect of any Shortfall Amounts, the price per Common Unit will be reduced by 25%. Notwithstanding Section 2.3 or anything else herein to the contrary, no Member will have pre-emptive rights with respect to the issuance of New Units pursuant to this Section 1.7(f). Upon consent of the Board (not to be unreasonably withheld or delayed), any Member may assign its right to participate in the funding of a Subsequent Capital Call to a Permitted Transferee.

(g) Member Loans. Any Member may, with the approval of the Board pursuant to Section 3.2, or, after the occurrence and continuance of a Specified Event set forth in clause (a) of the definition thereof, approval of the BX Directors, lend or advance money to the Company (a "***Member Loan***"). Each Member Loan shall be issued on terms and conditions as determined by the Board. In the event that the Board approves a Member Loan, the Company shall provide reasonable notice to the other Members of the amount of such Member Loan, and the terms thereof, and shall provide the other Members a reasonable opportunity to participate in such lending or advance pro rata based upon such Member's Percentage Interest, provided, however, that subject to the unanimous consent of the Board (which consent will not be unreasonably withheld or delayed) any Member may assign its right to participate in such Member Loan to a Permitted Transferee. If any Member shall make a Member Loan to the Company, the amount of any such Member Loan shall not be treated as a Capital Contribution but shall be a debt due from the Company. The obligations of the Company under all such Member Loans shall be subject and subordinate to the prior payment in full to Persons, other than Members, who have provided debt financing for the Vessels or Approved Vessels and all other indebtedness of the Company to Persons other than Members and their Affiliates. No Member shall be obliged to make a Member Loan to the Company or any of the Subsidiaries. Notwithstanding the foregoing, participation by a Member in a loan or other debt financing of the Company in which Persons who are not Members, Affiliates of Members or Permitted Transferees participate shall not constitute a Member Loan.

(h) BX Commitment Funding Default. Notwithstanding anything herein to the contrary, in the event that BX, Blackstone Family and/or BTO SMD fail to make a Capital Contribution pursuant to Section 1.7(b), the Eletson Directors shall have the right to cause the Company to obtain equity financing up to an amount equal to such Shortfall Amount (a "***Default Financing***"). In connection with any such Default Financing, the Eletson Directors (without approval of BX Directors) shall be authorized by resolution to cause the Company to issue additional Common Units at a price per Common Unit equal to the lesser of (i) the fair market value per Common Unit as determined by an Appraiser and (ii) $10.00 per Common Unit;

provided, however that any Common Units issued in respect of such Shortfall Amount will be reduced by 25%. Notwithstanding anything to the contrary set forth herein, the rights of the Company pursuant to this Section 1.7(h), together with the rights of the Company under Section 8.2(b) and 8.3(b) of the Contribution Agreement shall represent the sole and exclusive remedy of the Company in respect of a failure of BX, Blackstone Family and/or BTO SMD to make Capital Contributions pursuant to Section 1.7(b).

1.8 Company Expenses. The Company shall be responsible for all Company Expenses.

1.9 Redemption of Class B Preferred Units. All or a portion of the Class B Preferred Units outstanding may be redeemed by the Company at any time (each exercise of such right, a "***Redemption***"); provided, however, that the Company may not redeem Class B Preferred Units in an amount less than $1,000,000. The Company may exercise the Redemption right by providing the Class B Preferred Members with a notice (the "***Redemption Notice***") setting forth (a) the amount that will be paid by the Company to each Class B Preferred Member in connection with the Redemption, and (b) the estimated closing date for the Redemption, which shall be no fewer than ten (10) days after the date on which the Company delivers the Redemption Notice. The price to be paid by the Company for each Class B Preferred Unit being redeemed at a Redemption shall be the sum (in immediately available funds) of (i) the Unpaid Class B-1 Capital Contribution with respect to each Class B-1 Preferred Unit and the Unpaid Class B-2 Capital Contribution with respect to each Class B-2 Preferred Unit, as applicable, plus (ii) the amount of Unpaid Class B-1 Preferred Return Balance with respect to such Class B-1 Preferred Unit and Unpaid Class B-2 Preferred Return Balance with respect to such Class B-2 Preferred Unit, as applicable, through the date of the Redemption plus (iii) if the Class B-2 Preferred Units are being redeemed in a Redemption that occurs prior to the second anniversary of the date of issuance of such Class B-2 Preferred Units, then the Make Whole Premium for such Class B-2 Preferred Unit, if applicable. In connection with any Redemption, each Class B Preferred Member agrees to cooperate with the Company and to take any and all actions reasonably requested by the Company, and to execute any and all agreements and instruments, including agreements conveying their Units to the Company. Notwithstanding anything to the contrary herein, on or prior to the earliest to occur of (i) a Mandatory Redemption Event and (ii) the two year anniversary of the issuance of the Class B Preferred Units (the "***Maturity Date***"), the Company shall exercise and fund a Redemption of all Class B Preferred Units then outstanding. In no event shall the Company complete a transaction resulting in a Mandatory Redemption Event without prior to or concurrently therewith consummating a Redemption of the Class B Preferred Units.

1.10 Commitment Fee. On or prior to July 31, 2018, the Company shall pay to BX, Blackstone Family and BTO SMD an aggregate amount of $500,000, payable to such parties pro rata in proportion to Preferred Units held.

ARTICLE II

UNITS

2.1 Classes of Members and Units. The Membership Interests in the Company shall be represented by Units which will be divided into separate classes, designated as follows: (a) Class A Preferred Units ("***Class A Preferred Units***"); (b) Class B Preferred Units ("***Class B Preferred Units***"), comprised of Class B-1 Preferred Units ("***Class B-1 Preferred Units***") and Class B-2 Preferred Units ("***Class B-2 Preferred Units***"); (c) Common Units ("***Common Units***"); and (d) the Special Member Unit ("***Special Member Unit***"). The Special Member Unit represents an economic interest only and shall not entitle the Special Member to any additional rights hereunder as a Member or a holder of Units other than those expressly set forth herein. Each Class of Units will have the rights, privileges and obligations set forth in this Agreement. No additional issuances of Units or other Equity Interests will be authorized by the Company, unless such issuances are made (i) in accordance with Section 1.7, (ii) during the Non-Class B-2 Period, with the approval of the Board (in accordance with Section 3.2) and 80% of the outstanding Units (excluding the Special Member Unit) and a Majority-in-Interest of the Preferred Units, and (iii) during the Class B-2 Period, with the approval of the Board and a Majority-in-Interest of the Preferred Units. Except as otherwise expressly provided in this Agreement, upon the consent of 80% of the outstanding Units (excluding the Special Member Unit) and a Majority-in-Interest of the Preferred Units, the Board shall have the right to authorize and cause the Company to issue, on such terms (including price) as may be determined by the Board, (i) additional Common Units or Preferred Units or other Equity Interests in the Company (including creating other classes or series thereof having different rights) ("***New Units***"), and (ii) obligations, evidences of indebtedness or other securities or interests convertible or exchangeable into Units or other Equity Interests in the Company; *provided*, *however*, that in no event shall (x) New Units be issued which have rights, preferences or privileges with respect to voting, liquidation or distributions which are pari passu or superior to the Preferred Units, and (y) except in the case of New Units issuances pursuant to Section 1.7(f), be issued for aggregate consideration per Unit which is less than the fair market value per Unit of the outstanding Preferred Units immediately prior to such issuance, as determined by an independent third party valuation expert with an international reputation that is selected by the Board in good faith; provided, however, that an approval of 80% of the outstanding Units shall not be required during the Class B-2 Period.

2.2 Issuance of Units. Each Person listed on the Register on the Effective Date was admitted as a Member of the Company on or prior to the Effective Date. As of the Effective Date, each Member has been issued the number of Preferred Units, Common Units and Special Member Unit as set forth in the Register hereto.

2.3 Pre-emptive Rights. If the Company proposes to issue New Units, other than pursuant to Section 1.7, the Company shall give written notice to each of the Members setting forth the purchase price, and other material rights, privileges and obligations of such New Units and the material terms and conditions upon which they are proposed to be issued. Thereafter, each of the Members shall have the right to acquire up to 100% of such New Units based on their respective Percentage Interests. Each of the Members may exercise such right by purchasing, within 10 Business Days after receiving notice of the proposed issuance from the Company (the

"***Preemptive Right Notice Period***"), up to 100% of such New Units based on their respective Percentage Interests upon the terms and conditions and for the purchase price set forth in the notice. After the expiration of the Preemptive Right Notice Period, the Company shall be permitted to issue and sell all of the New Units which have not been purchased by the Members to one or more third parties, but only within 120 days after the expiration of the Preemptive Right Notice Period and upon the terms and conditions which are not materially more favorable than the terms offered in the Preemptive Right Notice. If the Company does not consummate the sale of the New Units within 120 days after the expiration of the Preemptive Right Notice Period, and the Company still wishes to issue the New Units, the Company must deliver a new written notice to each of the Members as required by the first sentence of this Section 2.3 and otherwise comply with the provisions of this Section 2.3 with respect to the proposed issuance of such New Units. The rights set forth in this Section 2.3 will not apply to any issuance of Equity Interests in connection with Section 10.6 or 10.7 and will terminate upon the completion of a Qualifying IPO.

2.4 Register. The Board shall maintain in an office of the Company a register (the "***Register***"), in the form attached hereto as Schedule II setting forth, with respect to all Members, such Member's name; the number and Class of Units held by such Member; such Member's Percentage Interest; and such other information as the Board may deem necessary or desirable. The Board shall from time to time cause the Register to be updated as necessary to accurately reflect the information therein. Any reference in this Agreement to the Register shall be deemed to be a reference to the Register as in effect at that time. Each Member shall receive, upon such Member's request, the information set forth on the Register with respect to such Member's Membership Interest as of the date of such request. Revisions to the Register made by the Company as a result of changes to the information set forth therein made in accordance with this Agreement shall not constitute an amendment of this Agreement, and shall not require the consent of any Member.

2.5 Cancellation of Special Member Unit. Upon the Special Member receiving distributions under Section 8.1 in an amount equal to the Special Member Distribution Amount, the Special Member Unit shall be automatically redeemed and cancelled without any further consideration, distribution or action on the part of any Person. Thereafter, the Special Member shall have no further rights under this Agreement and no entitlement to the capital, profits, income, payments, distributions and other proceeds of the Company. Upon the request of the Company, the Special Member shall execute and deliver to the Company certificates, assignments and other instruments of conveyance representing the redemption, transfer and/or cancellation of the Special Member Unit.

ARTICLE III

MANAGEMENT OF THE COMPANY

3.1 Day-to Day Operations and Control.

(a) Subject to Section 1.4 and except as otherwise provided in this Agreement with respect to matters which are expressly required to be approved by the Members pursuant to this Agreement or as otherwise required in the Act, the Board shall have the

sole right to manage and control the business, operations and affairs of the Company and to do any and all acts on behalf of the Company that are necessary, advisable or convenient to the discharge of its duties under this Agreement and to manage the operations and affairs of the Company in accordance with the purposes set forth in Section 1.4.

(b) The Board may appoint individuals that are nominated by a Majority in Interest of the Members as officers of the Company (the "***Officers***") as it deems necessary or desirable to carry on the day-to-day business of the Company and the Board may delegate to such Officers such power and authority as the Board deems advisable; provided, however, that during the Class B-2 Period such appointment and nomination shall only require a Majority-in-Interest of the Preferred Units. No Officer need be a Member or Director. Any individual may hold two or more offices of the Company. Each Officer shall hold office until his successor is designated by the Board or until his earlier death, resignation or removal. Any Officer may resign at any time upon written notice to the Board. Any Officer may be removed by the Board (acting by majority vote of all Directors other than the Officer being considered for removal, if applicable) with or without cause at any time. A vacancy in any office occurring because of death, resignation, removal or otherwise, may, but need not, be filled by the Board.

(c) The Officers shall at all times carry out their respective duties and actions hereunder in a manner consistent with this Agreement, the purposes of the Company set forth in Section 1.4 and the supervision and direction of the Board. Subject to Section 3.2, the Board shall delegate by resolution such duties and actions as it deems appropriate.

(d) The number and mix of employees of the Company and its Subsidiaries will be determined by the chief executive officer, subject to the approval of the Board, based on the number and type of vessels and other shipping assets owned or operated by the Company and its Subsidiaries.

(e) Notwithstanding anything to the contrary set forth in this Section 3.1 or Section 3.2, the BX Directors shall have the right to cause the Group Companies to exercise the Group Companies' respective termination rights under Section 9 of each of the Management Agreements in the event that:

(i) the Manager has been negligent in the performance of its services and obligations as specified in the Management Agreements, or

(ii) in respect of any Vessel in operation under normal trading conditions,

A. for a period of three (3) consecutive months, all charter approvals of such Vessel are cancelled or void,

B. such Vessel's flag state Safety Management Systems ("***SMS***") certificate is cancelled or expires and no valid

SMS certificate for such Vessel is issued or renewed within three (3) months after such cancellation or expiry, or

C. such Vessel's classification society withdraws the Vessel's class certificate and no valid class certificate for such Vessel is issued or renewed within three (3) consecutive months after such cancellation, or

(iii) either (x) a Specified Event set forth in clause (b) of such definition has occurred that, to the extent curable, is not cured within 90 days of the date on which such Specified Event became known to Eletson or reasonably should have become known to Eletson, or (y) a Specified Event set forth in clause (b) of such definition that is not capable of cure has occurred and is continuing.

3.2 Fundamental Actions. Except for actions authorized to be taken by Preferred Members pursuant to Section 3.6(c), the prior approval of at least four Directors shall be required in order for the Company to undertake, or permit or cause any Group Company to undertake, (i) during a Non-Class B-2 Period, any of the actions set forth on Schedule VI, and (ii) during the Class B-2 Period, any of the actions set forth on Schedule VII (each a "***Fundamental Action***").

3.3 Board of Directors.

(a) The Company shall have a board of managers (the "***Board***") comprised of a maximum of five managers ("***Directors***") who shall be designated by the Members pursuant to the terms and provisions of this Section 3.3(a). Prior to the consummation of a Qualifying IPO, two Directors shall be designated and appointed by BX ("***BX Directors***") and two Directors shall be designated and appointed by Eletson ("***Eletson Directors***"); provided, however, that during the Class B-2 Period, the size of the Board will be increased to five and BX shall be entitled to designate and appoint an additional Director to the Board, and such additional Director shall be deemed a BX Director for all purposes hereunder. An individual does not need to be a Member, Officer or employee of the Company to serve as a Director. Each Director shall serve at the pleasure of the Member who was entitled to designate such Director ("***Designating Member***"). The initial BX Directors shall be Jasvinder Khaira and Andrea Serra , and the initial Eletson Directors shall be Vassilis E. Kertsikoff and Lascarina J. Karastamati. Only the Designating Member who originally designated a Director may remove such Director, *provided further,* that in the event the number of Directors to be appointed by any Member is reduced pursuant to Section 3.3(b), the Designating Member shall promptly remove such Director(s). Notwithstanding the foregoing, a Designating Member shall remove as soon as practicable any Director that such Designating Member appointed if such Director is (a) convicted of a felony or other crime involving moral turpitude or other Disabling Conduct, (b) dies or (c) becomes unable to perform his/her duties hereunder on account of illness or other incapacity. Any Director may resign upon written notice to the Designating Member who designated such Director and to the Company. The resignation shall take effect upon receipt of such notice, or at such later time as shall be specified in such notice. Any vacancy occurring for any reason in the number of Directors shall be filled by the

Designating Member that originally designated the Director whose position has become vacant.

(b) In the event that Eletson's Common Units or BX's Units (individually or together with its respective Permitted Transferees) cease to represent at least 33.3% of the Units held by such Member as of the Initial Closing Date, the consent or approval of such Member's appointed Director(s) shall not be required to engage in any actions subject to the approval rights set forth in Section 3.2.

(c) At the election of BX or Eletson, the Company shall take all actions required to cause directors designated by BX or Eletson pursuant to the terms and provisions of this Section 3.3(c), as applicable, to represent 50% of the members of the board of directors of each Subsidiary (including each Shipco); provided, however, that during the Class B-2 Period, BX shall be permitted to appoint a majority of the members of the board of each Subsidiary (including each Shipco). Such actions may include, without limitation, removing directors then serving on the board of directors of any Subsidiary, appointing directors designated by BX or Eletson to the board of directors of any Subsidiary, as applicable, and/or increasing the size of the board of directors of any Subsidiary.

3.4 Meetings of the Board.

(a) Meetings of the Board shall be held at least once each calendar quarter and may also be called at any time by any Director. All meetings shall be held upon ten days notice by mail or two Business Days' notice delivered personally or by telephone, e-mail or facsimile (or upon such shorter notice period but not less than one Business Day if necessary under the circumstances and if approved by the Board). A notice must specify the purpose of any meeting. Notice of a meeting need not be given to any Director who signs a waiver of notice or a consent to holding the meeting with or without such Director present (which waiver or consent need not specify the purpose of the meeting) or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior to its commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the Company records or made a part of the minutes of the meeting. Any action taken by the Board without proper notice, or proper waiver of notice, shall be void. A majority of the Directors present may adjourn any meeting to another time and place. Notice of any adjournment (which may be telephone notice if such meeting is adjourned for less than 24 hours) shall be given prior to the time of the adjourned meeting to the Directors, including those Directors who are not present at the time of the adjournment. Meetings of the Board may be held at any place which has been designated in the notice of the meeting or at such place as may be approved by the Board. Members of the Board may participate in a meeting through use of conference telephone or similar communications equipment, so long as all Directors participating in such meeting can hear one another. Participation in a meeting in such manner constitutes presence of person at such meeting.

(b) The presence of at least two Eletson Directors and two BX Directors at a

duly noticed meeting of the Board shall constitute a quorum. If such quorum is not be present at any meeting of the Board, the directors present shall adjourn the meeting and promptly give notice to the other Directors of the date and time at which it shall be reconvened, which notice shall include a copy of the notice previously given with respect to such meeting and, if applicable, shall specify in writing that the Board has invoked the procedures with respect to such reconvened meeting set forth in the following sentence; provided that any Director may, by notice to the other Directors sent within 48 hours of the request to reconvene, set an alternate date and time to reconvene the meeting at a date not exceeding 5 Business Days from the date of the originally scheduled meeting. Notwithstanding anything herein to the contrary, if such notice is given and the reconvened meeting is held, then at such reconvened meeting the presence in person or by proxy of at least two Eletson Directors and at least two BX Directors shall not be required in order for a quorum to be present; provided, however, that (A) the only business that may be conducted at such reconvened meeting is the business specifically set forth in the notice of meeting (or in the materials accompanying such notice) for the original meeting and (B) an action that specifically requires approval of an Eletson Directors and a BX Director (e.g., an action requiring approval as set forth in Section 3.2) may not be taken at such reconvened meeting unless at least one Eletson Director or one BX Director, as applicable, is present and such action is approved by all Directors present at such meeting.

(c) Subject to Section 3.6, each Director present at any meeting shall be entitled to cast one vote on each matter that comes before the Board for a vote. Except as otherwise specifically set forth in this Agreement, every action or resolution done or made by the Board shall require only the majority vote of all of the Directors. Any action required or permitted to be taken by the Board may be taken (except as otherwise set forth in this Agreement) without a meeting, without prior notice and without a vote, if a consent or consents in writing shall be signed by (i) during a Non-Class B-2 Period, at least four (4) Directors, and (ii) during the Class B-2 Period, at least three (3) Directors.

(d) From time to time, the Board may invite any member of management of the Company and/or any representative of BX to participate in discussions of any matter at any Board meeting in a non-voting capacity.

3.5 Approval of Budget. Not later than thirty (30) days prior to the commencement of each Fiscal Year, the chief executive officer, together with the other Officers of the Company, shall, under the supervision of the Board, cause to be prepared a proposed quarterly and annual operating budgets for the Group Companies in detail for the upcoming Fiscal Year, including, without limitation, capital and operating expense budgets, and expenses, covenant compliance calculations of all outstanding and projected indebtedness, and profit and loss projections, all itemized in reasonable detail, including itemization of provisions for compensation of employees, consultants and Officers ("***Proposed Budget***"). The Board shall consider the Proposed Budget and work with management of the Company to revise and adjust the Proposed Budget in a form acceptable to the Board, in its sole discretion (any such Proposed Budget approved by the Board and/or a Rollover Budget, an "***Approved Budget***"). The Board shall have the

authority to amend and modify the Approved Budget during the course of each Fiscal Year in its sole discretion. If the Board fails to approve an Approved Budget for the Fiscal Year beginning on January 1, 2014 or January 1, 2015 prior to the commencement of such Fiscal Year, then, until the Approved Budget for such Fiscal Year is approved by the Board subject to Section 3.2, the Approved Budget for such Fiscal Year shall be the Approved Budget for the prior Fiscal Year (as in effect on the last day of the prior Fiscal Year) increased by five percent (5%) for all fixed and variable expenses, together with additional adjustments as are reasonably required to reflect (x) capital expenditures and other matters that have previously been approved by the Board subject to Section 3.2 and (y) additional expenses relating to any Approved Vessel to be acquired by any Group Company during such Fiscal Year, and excluding all extraordinary and non-recurring items (a "***Rollover Budget***").

3.6 Specified Event. Upon the occurrence and continuance of (a) a Specified Event set forth in clause (a) of such definition that is not cured by the end of the later of (i) the third Fiscal Quarter following such Specified Event and (ii) the third anniversary of the Initial Closing Date (and provided that a Majority-in-Interest of the Preferred Members has provided written notice thereof to the Company), (b) a Specified Event set forth in clause (b) of such definition that, to the extent curable, is not cured within 90 days of the date on which such Specified Event became known to Eletson, or reasonably should have become known to Eletson, (c) a Specified Event set forth in clause (b) of such definition that is not capable of cure, or (d) a Specified Event set forth in clause (c) of such definition, then, notwithstanding anything to the contrary set forth in Section 3.2, the Preferred Members, acting by Majority-in-Interest of the Preferred Units shall have the right to make any and all decisions and determinations to be made with respect to, and to cause:

(A)(i) the Group Companies to dispose of one or more Vessels (or the equity in the Subsidiary that is the sole owner of any such Vessels), (ii) a Drag Along Transaction as contemplated by Section 10.2(d), or (iii) the Group Companies to effect a Roll-Up Transaction or Qualifying IPO as contemplated by Sections 10.6 and 10.7, respectively;

(B) the Group Companies to terminate any of their respective employees who is not an officer and appoint a replacement employee, subject to the approval of the Majority-in-Interest of the Common Members (such approval to not be unreasonably withheld); provided that, notwithstanding the foregoing, the Preferred Members shall have such right only in the event that the employee subject to termination had substantially under-performed his or her duties to the Group Companies; and

(C)(i) the Group Companies to exercise their rights to terminate the Managers rights in accordance with the terms of the relevant Management Agreements, and/or (ii) terminate any officer, employee, or consultant to the Group Companies, in each case, only to the extent that a Majority-in-Interest of the Preferred Members have determined in good faith that the Manager or such officer, employee or consultant, as the case may be, is hindering, restricting or delaying or otherwise limiting a sale of one or more of the Group Companies or

their assets, including, without limitation, any action taken, or permitted to be taken by the Preferred Members in accordance with Section 3.6(A).

ARTICLE IV

THE MEMBERS

4.1 No Participation in Management, etc. Except as otherwise expressly provided herein, no Member shall 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.

4.2 Actions; Meetings of Members.

(a) Actions. Any action requiring the affirmative vote of Members under this Agreement, unless otherwise specified herein, may be taken by vote at a meeting or, in lieu thereof, by written consent of Members representing the required percentage of Units as specified herein. Except to the extent expressly required by law, the Special Member Unit shall be non-voting and the Special Member shall have no right to vote on any matter relating to the Company or attend meetings of the Members.

(b) Meetings. Meetings of the Members may be called by any Member(s) representing at least 20% of the outstanding Units (excluding the Special Member Unit) by giving at least 15 days prior notice of such meeting to each Member. Such notice shall specify the time, place and any action proposed to be taken at such meeting. Meetings of the Members will be held in person at the principal place of business of the Company; provided that Members may participate in meetings by conference telephone or other communications equipment pursuant to which all Persons participating in the meeting can hear each other. Any Member may waive notice of any meeting in writing before, at, or after such meeting. Attendance at a meeting shall constitute a waiver of notice of such meeting. The presence of at least 80% of the outstanding Units (excluding the Special Member Unit) at a meeting shall constitute a quorum.

4.3 Bankruptcy, Dissolution or Withdrawal of a Member. The bankruptcy, insolvency, dissolution or withdrawal of a Member (including the Special Member) shall not in and of itself dissolve or terminate the Company. To the fullest extent permitted by law, no Member shall withdraw from the Company prior to the dissolution of the Company other than as permitted pursuant to a Transfer completed in compliance with Article X or, solely with respect to the Special Member, upon cancellation of the Special Member Unit in accordance with Section 2.5.

ARTICLE V

LIABILITY, EXCULPATION AND INDEMNIFICATION

5.1 Liability. Except as otherwise expressly required by law or as expressly provided in this Agreement, a Member, as such, shall not be obligated personally, solely by reason of

being a Member, for the debts, obligations or liabilities of the Company, including under a judgment, decree or order of a court. None of the Members shall be required to lend any funds to the Company or make any further Capital Contributions to the Company or to repay to the Company, or any creditor of the Company all or any portion of any negative amount of such Member's Capital Account.

5.2 Exculpation.

(a) Generally. No Covered Person shall be liable to the Company or any Member, and each Member does hereby release such Covered Person, for any act or omission, including any mistake of fact or error in judgment, taken, suffered or made by such Covered Person; *provided* that such act or omission does not constitute Disabling Conduct of the Covered Person or a breach of its obligations under Section 12.9.

(b) Reliance Generally. A Covered Person shall incur no liability to the Company or any Member in acting upon any signature or writing reasonably believed by such Covered Person to be genuine, and may rely in good faith on a certificate signed by an executive officer of any Person in order to ascertain any fact with respect to such Person or within such Person's knowledge and may rely in good faith on an opinion of counsel selected by such Covered Person with respect to legal matters. Each Covered Person may act directly or through such Covered Person's agents or attorneys. Each Covered Person may consult with counsel, appraisers, accountants and other skilled Persons selected with reasonable care by such Covered Person and shall not be liable to the Company or any other Member for anything done, suffered or omitted in good faith in reasonable reliance upon the advice of any of such Persons. No Covered Person shall be liable to the Company or any Member for any error of judgment made in good faith by a responsible officer or employee of such Covered Person; *provided* such error does not constitute Disabling Conduct or a breach of its obligations under Section 12.9. Except as otherwise provided in this Section 5.2, no Covered Person shall be liable to the Company or any Member for any mistake of fact or judgment by such Covered Person in conducting the affairs of the Company or otherwise acting in respect of and within the scope of this Agreement; *provided* that such mistake does not constitute Disabling Conduct or a breach of its obligations under Section 12.9.

(c) Reliance on this Agreement. To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to the Members, any Covered Person acting under this Agreement or otherwise shall not be liable to the Company or to any Member for such Covered Person's good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict or eliminate the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person, to the fullest extent permitted under the Act.

5.3 Indemnification.

(a) Indemnification Generally. The Company shall and hereby does, to the fullest extent permitted by applicable law, indemnify, hold harmless and release (and each Member does hereby release) each Covered Person from and against any and all claims, demands, liabilities, costs, expenses, damages, losses, suits, proceedings and actions, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated ("***Claims***"), that may accrue to or be incurred by any Covered Person, or in which any Covered Person may become involved, as a party or otherwise, or with which any Covered Person may be threatened, relating to or arising out of the activities or operations of the Company or any Subsidiary, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and reasonable and documented counsel fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a "***Proceeding***"), whether civil or criminal (all of such Claims and amounts covered by this Section 5.3, and all expenses referred to in Section 5.3(c), are referred to collectively as "***Damages***"), except to the extent that it has been reduced to a final, non-appealable judgment by a court of competent jurisdiction that such Damages arose primarily from the Disabling Conduct of such Covered Person or a breach of its obligations under Section 12.9. The termination of any Proceeding by settlement shall not, of itself, create a presumption that any Damages relating to such settlement or otherwise relating to such Proceedings arose primarily from the Disabling Conduct of any Covered Person or a breach of its obligations under Section 12.9.

(b) No Direct Member Indemnity. Members shall not be required to directly indemnify any Covered Person.

(c) Expenses, etc. The reasonable and documented expenses (including attorney's fees) incurred by a Covered Person in defense or settlement of any Claim that shall be subject to a right of indemnification hereunder shall be advanced by the Company to such Covered Person prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Covered Person to repay such amount if it has been reduced to a final, non-appealable judgment by a court of competent jurisdiction that the Covered Person is not entitled to be indemnified hereunder.

(d) Notices of Claims, etc. Promptly after receipt by a Covered Person of notice of the commencement of any Proceeding, such Covered Person shall, if a claim for indemnification in respect thereof is to be made against the Company, give written notice to the Company of the commencement of such Proceeding; *provided* that the failure of any Covered Person to give notice as provided herein shall not relieve the Company of its obligations under this Section 5.3, except to the extent that the Company is actually and materially prejudiced by such failure to give notice. In case any such Proceeding is brought against a Covered Person (other than a derivative suit in right of the Company), the Company will be entitled to participate in and to assume the defense thereof to the extent that the Company may wish, with counsel reasonably satisfactory to such Covered Person. After notice from the Company to such Covered

Person of the Company's election to assume the defense thereof, the Company will not be liable for expenses subsequently incurred by such Covered Person in connection with the defense thereof. The Company will not consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Covered Person of a release from all liability in respect to such Claim. The right of any Covered Person to the indemnification provided herein shall be cumulative with, and in addition to, any and all rights to which such Covered Person may otherwise be entitled by contract or as a matter of law or equity and shall extend to such Covered Person's successors, assigns, heirs and legal representatives.

(e) Survival of Protection. The provisions of this Section 5.3 shall continue to afford protection to each Covered Person regardless of whether such Covered Person remains in the position or capacity pursuant to which such Covered Person became entitled to indemnification under this Section 5.3 and regardless of any subsequent amendment to this Agreement, and no amendment to this Agreement shall reduce or restrict the extent to which these indemnification provisions apply to actions taken or omissions made prior to the date of such amendment.

(f) Insurance. Subject to Section 3.1, promptly following the Initial Closing Date, the Board shall use commercially reasonable efforts to cause the Company to purchase, at the Company's expense, insurance (including liability insurance policies, fiduciary and errors and omissions policies) to cover liabilities covered by the indemnification provisions set forth in this Article V. Any such insurance may extend beyond the term of the Company.

(g) Other Sources of Indemnification. The Company hereby acknowledges that the Members, and their respective direct or indirect partners and shareholders (each a "***Parent Party***" and collectively the "***Parent Parties***") have provided certain of the Covered Persons with certain rights to indemnification, advancement of expenses and/or insurance. The Company hereby agrees that (i), between the rights provided by the Company, on the one hand, and the Parent Parties, on the other, the Company has primary responsibility for indemnification and advancement and any obligation of the Parent Parties to advance expenses or to pay indemnification are secondary, (ii) that the Company shall be required to advance the full amount of expenses incurred by the Covered Persons, subject to other indemnification or insurance payments that shall be provided by the Company or its direct or indirect parents, and shall be liable to indemnify the Covered Persons for the full amount of all amounts contemplated by subsection (a), in each case to the extent legally permitted and as required by the terms of this Agreement, without regard to any rights the Covered Persons may have against the Parent Parties, and (iii) that the Company irrevocably waives, relinquishes and releases all Parent Parties from any and all claims against them for contribution, subrogation or any other recovery of any kind in respect thereof in connection with any such indemnification or advance of expenses to any Covered Person. The Company further agrees that no advancement or payment by the Parent Parties or their insurers on behalf of any Covered Person with respect to any claim for which such Covered Person has sought indemnification from the Company shall affect the foregoing and the Parent

Parties shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Covered Persons against the Company, who shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable such Parent Parties to effectively bring suit to enforce such rights. The Company and the Members agree that all Parent Parties and all Covered Persons are express third party beneficiaries of the terms of this Article V and are entitled to enforce this Article V against the Company as though each such Parent Party or Covered Person were a party to this Agreement.

ARTICLE VI

DUTIES AND DECISIONS OF MEMBERS AND DIRECTORS

6.1 Duties and Decisions. To the extent permitted by applicable law, each Member and the Special Member hereby:

(a) agrees that the terms of this Section 6.1, to the extent that they modify or limit any fiduciary duty or similar obligation, if any, that any Member or Director may have to the Group Companies or another Member under the Act or other applicable law (whether common or statutory), rule or regulation, are reasonable in form, scope and content and shall control to the fullest extent possible if it is in conflict with any duty of loyalty or similar obligation, if any, that any Member or Director, may have to the Group Companies or another Member, under the Act or any other applicable law (whether common or statutory), rule or regulation;

(b) waives any fiduciary duty or similar obligation, if any, that any Member or Director may have to the Group Companies or another Member, pursuant to the Act or any other applicable law (whether common or statutory), rule or regulation; and

(c) agrees that other than as specified in Section 6.2, each Member shall be free to engage in investments or possess an interest in other business ventures or commercial dealings of every kind and description, including activities which may be competitive with the Group Companies and that neither the Company nor any Member shall have the right to participate in any such investments or other activities and no Member shall be obligated to account to the Company or any of the Members in respect thereof.

(d) Each Officer shall have the fiduciary duties to the Group Companies as those of an officer to a corporation organized under the laws of Delaware.

6.2 Restrictions on Activities of the Members. Eletson and the Special Member agree that, except for activities engaged in through the Group Companies, none of Eletson or any of its Affiliates (including the Special Member) will directly or indirectly acquire, own, operate, charter or engage in the management of any LPG, ethylene, petrochemical gases and ammonia sectors. Each of BX, Blackstone Family and BTO SMD agrees that it shall not have a direct interest in the ownership of any vessels employed in the transport of LPG, ethylene,

petrochemical gases or ammonia; *provided, however*, that none of BX, Blackstone Family, BTO SMD or any of their respective Affiliates shall be prohibited from investing in (i) the securities of operating companies holding shipping or other maritime assets, (ii) acquiring a direct or indirect interest in (A) any vessels which are not LPG, ethylene, petrochemical gases or ammonia vessels, or (B) any other shipping or maritime assets. The obligations of the Members pursuant to this Section 6.2 shall terminate on the date which is 18 months subsequent to the date on which such Member (or its Permitted Transferees) is no longer a Member.

6.3 Discretion. Except as otherwise required under applicable law, whenever in this Agreement a Member or Director is permitted or required to make a decision (a) in its "sole discretion" or "discretion" or under a grant of similar authority or latitude, the Member or Director may consider only such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interests of or factors affecting the Company or any other Member, or (b) in its "good faith" or under another expressed standard, a Member or Director shall act under such express standard and shall not be subject to any other or different standard imposed by this Agreement or any other agreement contemplated herein or by relevant provisions of law (whether common or statutory) or in equity or otherwise.

ARTICLE VII

CAPITAL ACCOUNTS; WITHHOLDING

7.1 Capital Accounts. A capital account ("***Capital Account***") shall be established and maintained by the Company for each Member. Each Capital Account shall be maintained in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv). On the transfer of Units representing all or part of a Member's Membership Interest, the Capital Account of the transferor that is attributable to the portion of such Membership Interest represented by such transferred Units shall carry over to the transferee Member in accordance with the provisions of Treasury Regulation Section 1.704-1(b)(2)(iv)(1). BX, Blackstone Family and BTO SMD shall each have an initial Capital Account equal to their pro rata portion of the distribution preference described in Section 8.1(b)(vi) of this Agreement.

7.2 Adjustments to Capital Accounts. As of the last day of each Period, the balance in each Member's Capital Account shall be adjusted by (i) increasing such balance by (x) such Member's allocable share of Profits and each other item of the Company's income, gain and other allocable items for such Period (allocated in accordance with Sections 7.3 and 7.5(d), (e), (f) and (i)), and (y) Capital Contributions, if any, made by such Member during such Period and (ii) decreasing such balance by (x) the amount of cash or the Gross Asset Value of Securities or other property distributed to such Member pursuant to this Agreement during such Period and (y) such Member's allocable share of Losses and each other item of the Company's loss, deduction and other allocable items for such Period (allocated in accordance with Sections 7.3 and 7.5(b) and (i)). Each Member's Capital Account shall be further adjusted, without duplication, with respect to any special allocations or adjustments pursuant to this Agreement.

7.3 Allocation to Capital Accounts. Except as otherwise provided herein, Profits and Loses (and, to the extent necessary, individual items of income, gain, loss, deduction or credit)

shall be allocated among the Capital Accounts of the Members with respect to each Period (or at such times as the Gross Asset Value of any property is adjusted pursuant to subparagraph (b) of the definition of "Gross Asset Value") in a manner such that the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, proportionately equal to (a) the distributions that would be made to such Members pursuant to Section 8.1 if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Gross Asset Value, all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Gross Asset Value of the assets securing such liability), and the net assets of the Company were distributed in accordance with Section 8.1 to the Members immediately after making such allocation, minus (b) such Member's share of Partnership Minimum Gain and Partner Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets. The allocations pursuant to this paragraph shall be made prior to taking into account (for capital account purposes or for purposes of determining entitlements pursuant to Section 8.1) any distributions in the particular Period. If, in any Period, there are insufficient Profits and Losses to allocate in accordance with this Section 7.3, the allocation of Profits and Losses for subsequent Periods shall take into account any such deficit in Profits and Losses in the current Period.

7.4 Withholding.

(a) General. Each Member shall, and hereby does, to the fullest extent permitted by applicable law, indemnify, hold harmless and release the Company and each Covered Person who is or who is deemed to be the responsible withholding agent for U.S. federal, state or local or non-U.S. income tax purposes against any and all claims, liabilities and expenses of whatever nature relating to such Covered Person's obligation to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Company with respect to such Member or as a result of such Member's participation in the Company.

(b) Authority to Withhold; Treatment of Withheld Tax. Notwithstanding any other provision of this Agreement, each Member hereby authorizes the Company, and the Tax Matters Partner on behalf of the Company, to withhold and to pay over, or otherwise pay, any withholding or other taxes payable or required to be deducted by the Company or any of its Affiliates (pursuant to the Code or any provision of U.S. federal, state or local or non-U.S. tax law) with respect to such Member or as a result of such Member's participation in the Company (including as a result of a distribution in kind to such Member). Prior to making any such withholding, the Tax Matters Partner or Partnership Representative shall notify such Member of the proposed withholding and the basis therefore and provide an opportunity for such Member to provide documentation or certificates that would eliminate or reduce the amount of such withholding. If and to the extent that the Company shall be required to withhold or pay any such withholding or other taxes or any imputed underpayment under Section 6225 of the Code as amended by the BBA paid by the Company with respect to items allocable to such Member, such Member shall be deemed for all purposes of this Agreement to have received a payment from the Company as of the time that such withholding or other tax or imputed underpayment is required to be paid, which payment shall be deemed to be a distribution with respect to such Member's

Membership Interest to the extent that such Member (or any successor to such Member's Membership Interest) would have received a cash distribution but for such withholding. To the extent that such payment exceeds the cash distribution that such Member would have received but for such withholding, the Company shall notify such Member as to the amount of such excess and such Member shall make a prompt payment to the Company of such amount by wire transfer. The Company may hold back from any such distribution in kind property having a Gross Asset Value equal to the amount of such taxes until the Company has received payment of such amount.

(c) Withholding Tax Rate. Any withholdings referred to in this Section 7.4 shall be made at the maximum applicable statutory rate under the applicable tax law unless the Board shall have received any certification or forms required to reduce such rate (assuming such certificates or forms are reasonable satisfactory to the Company based upon advice of the Company's counsel) or an opinion of counsel, or other evidence, satisfactory to the Board to the effect that a lower rate is applicable or that no withholding is applicable.

(d) Withholding from Distributions to the Company. In the event that the Company receives a distribution or payment from or in respect of which tax has been withheld, due to the particular circumstance of one or more of the Members, the Company shall be deemed to have received cash in an amount equal to the amount of such withheld tax, and each Member shall be deemed for all purposes of this Agreement to have received a payment from the Company as of the time of such distribution equal to the portion of such amount that is attributable to such Member's Membership Interest as determined in good faith by the Company (upon approval by the Board), which payment shall be deemed to be a distribution pursuant to Section 8.1 to the extent that such Member (or any successor to such Member's Membership Interest) would have received a cash distribution but for such withholding. To the extent that such payment exceeds the cash distribution that such Member would have received but for such withholding, the Company shall notify such Member as to the amount of such excess and such Member shall make a prompt payment to the Company of such amount by wire transfer, which payment shall not constitute a Capital Contribution. In the event that the Company anticipates receiving a distribution or payment from which tax will be withheld in-kind, the Company (upon approval by the Board) may elect to prevent such in-kind withholding by paying such tax in cash and may require each Member in advance of such distribution to make a prompt payment to the Company by wire transfer of the amount of such tax attributable to such Member's Membership Interest as equitably determined by the Company (upon approval by the Board), which payment shall not constitute a Capital Contribution or increase the Capital Account of such Member.

7.5 Other Matters.

(a) Tax Allocations. Except as otherwise provided herein, each item of income, gain, loss or deduction recognized by the Company for any tax year shall be allocated among the Members for U.S. federal, state and local income tax purposes in the same manner as such items are allocated for book purposes under Section 7.4 and

Section 7.5(b), (d), (e), (f) and (i); *provided* that the Board may adjust such allocations as long as such adjusted allocations have substantial economic effect or are in accordance with the Members' Membership Interests, in each case within the meaning of the Code and the Treasury Regulations. Tax credits and tax credit recapture shall be allocated in accordance with the interests of the Members in the Company as provided in Treasury Regulation Section 1.704-1(b)(4)(ii). Items of the Company's taxable income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall be allocated among the Members in accordance with Code Section 704(c) so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Gross Asset Value using the traditional method of Treasury Regulation Section 1.704-1(b)(2). If the Gross Asset Value of any Company asset is adjusted, subsequent allocations of items of taxable income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c). If all or any portion of any Member's Units are transferred during any tax year, items of Profit and Loss attributable to the transferred Units for such tax year shall be allocated between the transferor and the transferee by closing the books with respect to such transferred Units as of the date of transfer, as permitted by Code Sections 706(c) and (d). All matters concerning allocations for U.S. federal, state and local and non-U.S. income tax purposes, including accounting procedures, not expressly provided for by the terms of this Agreement shall be determined in good faith by the Board. The allocations pursuant to this Section 7.5(a) are solely for U.S. federal, state and local income tax purposes and shall not be taken into account for the purpose of computing, or otherwise affect in any way, any Member's Capital Account or any Member's share of Profits, Losses or distributions.

(b) No Capital Account Deficits. No allocation of loss shall be made to any Member, if, as a result of such allocation, such Member would have a deficit in its Capital Account.

(c) Depreciation Recapture. The amount of any income of the Company attributable to the recapture of depreciation shall be allocated among the Members in the same ratio in which such depreciation was allocated to such Members all in accordance with Treasury Regulation Section 1.1245-1.

(d) Minimum Gain Chargeback. Notwithstanding any other provision of this Section 7.5, and except as otherwise provided in Treasury Regulation Section 1.704-2(f), if there is a net decrease in Company minimum gain during any taxable year of the Company, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Company minimum gain, as determined under Treasury Regulation Section 1.704-2(g). The items so allocated shall be determined in accordance with Treasury Regulation Section 1.704-2(f). This Section 7.5(d) is intended to comply with the minimum gain chargeback requirement in Treasury Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

(e) Member Minimum Gain Chargeback. Notwithstanding any other provision of this Section 7.5, if there is a net decrease in Member nonrecourse debt minimum gain attributable to a Member nonrecourse debt, then, except as otherwise provided in Treasury Regulation Section 1.704-2(i), each Member who has a share of the Member nonrecourse debt minimum gain attributable to such Member nonrecourse debt, determined in accordance with Treasury Regulation Section 1.704-2(i), shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member nonrecourse debt minimum gain attributable to such Member nonrecourse debt, determined in accordance with Treasury Regulation Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be allocated shall be determined in accordance with Treasury Regulation Sections 1.704-2(i)(4) and (j)(2). This Section 7.5(e) is intended to comply with the minimum gain chargeback requirement in Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(f) Qualified Income Offset. In the event that any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, any deficit in the Member's Capital Account after all other allocations provided for in this Section 7.5 have been tentatively made as if this Section 7.5(f) were not part of this Agreement.

(g) Tax Matters Member. BX is hereby designated as the tax matters partner ("***Tax Matters Partner***") of the Company, in accordance with the Treasury Regulations promulgated pursuant to Code Sections 6231 through 6233 as in effect prior to amendment by the BBA (and as the partnership representative (the "***Partnership Representative***") pursuant to Code Section 6223 as amended by the BBA when such provision becomes effective) and any similar provisions under any state or local or non-U.S. tax laws. Each Member hereby consents to such designation and agrees that upon the request of the Company such Member will execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such consent. The Board, including at least one BX Director, will determine whether to make or revoke any available election pursuant to the Code except any election which could have the result that income sourced within the United States or income effectively connected with the conduct of a trade or business in the United States would be reportable by a Member if it otherwise would not be so reportable (for the avoidance of doubt, this exception is not intended to include any entity classification election). Each Member will, upon request, supply the information necessary to give proper effect to any such election to the extent that such information is readily available to it and the provision of such information does not violate any law or any agreement to which it is a party. The Tax Matters Partner and Partnership Representative is authorized and required to represent the Company (at BX's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend

Company funds for professional services and costs associated therewith. Each Member agrees to cooperate with the Tax Matters Partner and Partnership Representative and to do or refrain from doing any or all things reasonably requested by the Tax Matters Partner or Partnership Representative with respect to the conduct of such proceedings that it can do or refrain from doing without violating any law or agreement to which it is a party and without incurring any expense or adverse consequence (tax or otherwise), and *provided, however*, that the Tax Matters Partner and Partnership Representative shall not make any determination as to whether the Company (either on its own behalf or on behalf of the Members) will contest or continue to contest any tax deficiencies assessed or proposed to be assessed by any taxing authority or make any type of settlement with any taxing authority without the prior approval of all Members. Any deficiency for taxes imposed on any Member (including penalties, additions to tax or interest imposed with respect to such taxes) will be paid by such Member, and if paid by the Company (as well as any imputed underpayment under Code Section 6225 as amended by the BBA paid by the Company with respect to items allocable to such Member), will be recoverable from such Member (including by offset against distributions otherwise payable to such Member).

(h) Treatment for Tax Purposes. The Company shall elect, effective prior to the Initial Closing Date, to be treated as a partnership for U.S. federal, state or local income tax purposes under Treasury Regulation Section 301.7701 3(a) and under any corresponding provision of state or local law. The Company shall not participate in the establishment with respect to the inclusion of interests in the Company of an "established securities market" (within the meaning of Treasury Regulation Section 1.7704 1(b)) or a "secondary market or the substantial equivalent thereof" (within the meaning of Treasury Regulation Section 1.7704 1(c))

(i) Regulatory and Target Allocations. It is the intent of the Members that, to the extent possible, all allocations pursuant to Section 7.5(b), (d), (e) and (f) (the "***Regulatory Allocations***") shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 7.5(i). Therefore, notwithstanding any other provision of this Section 7.5 (other than the Regulatory Allocations), the Board shall make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to Section 7.4 without regard to the Regulatory Allocations.

ARTICLE VIII

DISTRIBUTIONS

8.1 Distributions.

(a) Operating Proceeds. Not later than 10 days following each Operating Proceeds Measurement Date, the Company shall distribute to the Members an amount

equal to the Operating Proceeds relating to the Measurement Period preceding such date less the Cash Reserve, in the following amounts and order of priority:

(i) First, 100% to the Class B Preferred Members, pro rata in proportion to the Class B Preferred Units until the Class B Preferred Members have received cumulative distributions pursuant to this Section 8.1(a)(i) and Section 8.1(b)(i) in an amount equal to the aggregate Class B Capital Contributions;

(ii) Second, 100% to the Class B-1 Preferred Members, pro rata in proportion to the Class B-1 Preferred Units until the Class B-1 Preferred Members have received cumulative distributions pursuant to this Section 8.1(a)(ii) and Section 8.1(b)(v) equal to the Unpaid Class B-1 Preferred Return;

(iii) Third, 100% to the Class B-2 Preferred Members, pro rata in proportion to the Class B-2 Preferred Units until the Class B-2 Preferred Members have received (i) cumulative distributions pursuant to this Section 8.1(a)(iii) and Section 8.1(b)(ii) equal to the Unpaid Class B-2 Preferred Return and (ii) cumulative distributions pursuant to Section 8.1(a)(i), this Section 8.1(a)(iii), Section 8.1(b)(i), and Section 8.1(b)(ii) equal to the product of 1.5 multiplied by the aggregate amount of Class B-2 Capital Contributions;

(iv) Fourth, 100% to the Class A Preferred Members, pro rata in proportion to the Class A Preferred Units, until the Class A Preferred Members have received an amount equal to the Unpaid Cash Preferred Return Balance;

(v) Fifth, 100% to the Class A Preferred Members, pro rata in proportion to Class A Preferred Units (A) prior to December 31, 2015, an amount equal to the Pre-Delivery Unpaid PIK Amount, and (B) subsequent to December 31, 2015, until the Class A Preferred Members have received an amount equal to the Unpaid PIK Amount balance of December 31, 2015 as allocated on four equal quarterly installments;

(vi) Sixth, 100% to the Class A Preferred Members, pro rata in proportion to the Class A Preferred Units, until the Class A Preferred Members have received distributions pursuant to this Section 8.1(a)(vi) in an amount ("***Preferred Cash Return***") equal to the greater of: (A) interest on the Accrued Value for such Measurement Period at the Applicable Interest Rate and (B) an amount equal to the product of the Operating Proceeds as of the Operating Proceeds Measurement Date multiplied by 40% multiplied further by the Funded Commitment Percentage; *provided, however*, that in the event clause (B) exceeds clause (A) and there is an Eletson Settlement Balance, then the amounts otherwise distributable pursuant to this Section 8.1(a)(vi) shall be instead distributed (x) first, to the Class A Preferred Members, pro rata in proportion to Class A Preferred Units, an amount equal to the amount specified in Section 8.1(a)(vi)(A), (y) second, to the Common Members, pro rata in proportion to Common Units until cumulative distributions pursuant to this clause (y) equal the Eletson

Settlement Balance as of such date and (z) thereafter to the Class A Preferred Members, pro rata in proportion to Class A Preferred Units.

(vii) Thereafter, 100% to the Common Members, pro rata in proportion to the Common Units, the remaining balance of such Operating Proceeds.

(b) Liquidity Proceeds. From time to time, in the discretion of the Board, the Company shall distribute Liquidity Proceeds to the Members in such amounts as the Board may determine; *provided*, *however*, that the Company shall distribute all Operating Proceeds (net of the Cash Reserve) in accordance with Section 8.1(a) immediately prior to each distribution of Liquidity Proceeds. Such distributions of Liquidity Proceeds shall be apportioned among the Members in the following amounts and order of priority:

(i) First, 100% to the Class B-2 Preferred Members, pro rata in proportion to the Class B-2 Preferred Units until the Class B-2 Preferred Members have received cumulative distributions pursuant to Section 8.1(a)(i) and this Section 8.1(b)(i) in an amount equal to the Class B-2 Capital Contributions plus any accrued and unpaid fees on the Class B-2 Capital Contributions (not including the Class B-2 Preferred Return);

(ii) Second, 100% to the Class B-2 Preferred Members, pro rata in proportion to Class B-2 Preferred Units until the Class B-2 Preferred Members have received cumulative distributions (i) pursuant to Section 8.1(a)(iii) and this Section 8.1(b)(ii) equal to the Unpaid Class B-2 Preferred Return and (ii) cumulative distributions pursuant to Section 8.1(a)(i), Section 8.1(a)(iii), Section 8.1(b)(i) and this Section 8.1(b)(ii) equal to the product of 1.5 multiplied by the Class B-2 Capital Contributions;

(iii) Third, (x) until the Special Member has received cumulative distributions pursuant to this Section 8.1(b)(iii) equal to the Special Distribution Amount, (A) 2.85% to the Special Member (which distributions shall reduce the Special Distribution Amount) and (B) 97.15% to the other Members to be apportioned and distributed in accordance with the priorities set forth in Sections 8.1(b)(iv)-(xi) and (y) thereafter, 100% to the other Members in accordance with the priorities set forth in Sections 8.1(b)(iv)-(xi);

(iv) Fourth, 100% to the Class B-1 Preferred Members, pro rata in proportion to the Class B-1 Preferred Units until the Class B-1 Preferred Members have received cumulative distributions pursuant to Section 8.1(a)(i) and this Section 8.1(b)(iv) in an amount equal to the Class B-1 Capital Contributions;

(v) Fifth, 100% to the Class B-1 Preferred Members, pro rata in proportion to Class B-1 Preferred Units until the Class B-1 Preferred Members have received cumulative distributions pursuant to Section 8.1(a)(ii) and this Section 8.1(b)(v) in an amount equal to the Unpaid Class B-1 Preferred Return;

(vi) Sixth, 100% to the Class A Preferred Members, pro rata in proportion to the Class A Preferred Units, until the Class A Preferred Members have received an amount equal to the Unpaid Cash Preferred Return Balance;

(vii) Seventh, 100% to the Class A Preferred Members, pro rata in proportion to the Class A Preferred Units, until the Class A Preferred Members have received an amount equal to the Unpaid PIK Amount;

(viii) Eighth, 100% to the Class A Preferred Members, pro rata in proportion to the Class A Preferred Units until the Class A Preferred Members have received cumulative distributions pursuant to this Section 8.1(b)(viii) equal to $16.5 million;

(ix) Ninth, 100% to the Class A Preferred Members, pro rata in proportion to the Class A Preferred Units, until the Class A Preferred Members have received cumulative distributions pursuant to this Section 8.1(b)(ix) equal to the sum of their aggregate Funded Commitment;

(x) Tenth, 100% to the Common Members, pro rata in proportion to the Common Units, until the Common Members have received cumulative distributions pursuant to this Section 8.1(b)(x) in an amount equal to their aggregate Capital Contributions made pursuant to Section 1.7(a) and 1.7(c); and

(xi) Thereafter, subject to Section 8.4, to the Common Members and Class A Preferred Members in such proportions as will result (as nearly as practicable) in cumulative distributions pursuant to Sections 8.1(b)(ix)-(x) being allocated among the Members pro rata in proportion to As Converted Common Units held by such Members.

8.2 General Distribution Provisions. Notwithstanding any other provision of this Agreement, distributions shall be made only to the extent such distributions are in compliance with the Act (including, without limitation, Section 40 of the Act) and other applicable law. At least 15 days prior to any distribution pursuant to this Agreement, the Company shall deliver a written report to each Director setting forth (i) a computation of Operating Proceeds as of applicable Measurement Period (ii) Liquidity Proceeds, if any, to be distributed and (iii) a computation of the amounts to be allocated to each Member in respect of such distribution. Prior to the liquidation of the Company pursuant to Article XI, all distributions to the Members will be made in the form of cash. Any distribution by the Company pursuant to this Agreement to the Person shown on the Company's records as a Member or to such Member's legal representatives, or to the Transferee of such Person's right to receive such distributions as provided herein, shall acquit the Company of all liability to any other Person that may be interested in such distribution by reason of any Transfer of such Person's interest in the Company for any reason (including a Transfer of such interest by reason of the death, incompetence, dissolution, liquidation or bankruptcy of such Person).

8.3 Additional Preferred Participation. Notwithstanding anything to the contrary set forth in Section 8.1(b), in the event that cumulative distributions to the Common Members (or

any Transferee thereof) in respect of the Common Units pursuant to Sections 8.1(b)(ix) - 8.1(b)(x) equal or exceed $520.0 million, then all amounts in excess of $520.0 million which are otherwise distributable to the Common Members (or any Transferee thereof) in respect of its Common Units pursuant to Sections 8.1(b)(ix) - 8.1(b)(x) shall instead be distributed 90% to the Common Members pro rata in proportion to the Common Units and 10% to the Class A Preferred Members, pro rata in proportion to the Class A Preferred Units.

8.4 Distributions in Kind. In the event that a distribution of Securities or other property is made, such Securities or other property shall be deemed to have been sold at their Gross Asset Value and the proceeds of such sale shall be deemed to have been distributed in cash to the Members pursuant to Section 8.1 for all purposes of this Agreement. Distributions of Securities or other property shall be made in proportion to the aggregate amounts that would be distributed to each Member pursuant to Section 8.1. The Board may cause certificates evidencing any Securities to be distributed to be imprinted with legends as to such restrictions on Transfer as the Board may determine are necessary or appropriate, including legends as to applicable U.S. federal or state or non-U.S. securities laws or other legal or contractual restrictions, and may require any Member to which Securities are to be distributed, as a condition to such distribution, to agree in writing (a) that such Member will not Transfer such Securities except in compliance with such restrictions and (b) to such other matters as the Board may determine are necessary or appropriate.

8.5 Final Distribution. Notwithstanding anything to the contrary in this ARTICLE VIII, the final distribution following the dissolution of the Company shall be made in accordance with the provisions of Section 11.3.

8.6 Initial Operating Proceeds Measurement Date. The Members agree that there will be an initial Operating Proceeds Measurement Date set for December 27, 2013 and that a distribution of Operating Proceeds pursuant to Section 8.1(a) will be made in respect of such Operating Proceeds Measurement Date no later than December 30, 2013. The Members acknowledge that determinations of Operating Proceeds with respect to such initial Operating Proceeds Measurement Date may be determined based upon estimates of available Operating Proceeds (subject to review by the Board). For the avoidance of doubt, to the extent that there are any differences between the amount of Operating Proceeds as finally determined by the Board in good faith for such initial Operating Proceeds Measurement Date and any estimates used in connection therewith then future distributions to the Members will be adjusted in good faith by the Board to account for any such differences.

ARTICLE IX

BOOKS AND RECORDS; REPORTS TO MEMBERS

9.1 Books and Records. The Company shall keep or cause to be kept full and accurate accounts of the transactions of the Company in proper books and records of account setting forth all information required by the Act. Such books and records shall be maintained in accordance with GAAP. Such books and records shall be available for inspection and copying by the Members or their duly authorized representatives during normal business hours for any purpose reasonably related to such Member's Membership Interest.

9.2 Tax Information. The Company shall prepare and timely file all U.S. federal, state and local and foreign tax returns required to be filed by the Company. Unless otherwise agreed to by the Board, any income tax return of the Company shall be prepared by an independent public accounting firm of recognized national standing selected by the Board. The Board shall cause the Company to deliver to each Member within 60 days of the end of each tax year an estimate of the items to be reflected on the Schedule K-1 of the Company's U.S. federal return of partnership income relating to such Member and shall deliver to each Member within 120 days of the end of each tax year such Member's Schedule K-1 together with such additional information as may be reasonably required by any Member in order to file its tax returns reflecting the Company's operations in any relevant jurisdictions or to report to its owners any information such person may need in connection with foreign taxes. The Company shall bear the costs and expenses of the preparation and filing of its tax returns and providing the information required by this Section 9.2.

9.3 Reports to Members.

(a) As soon as practicable, but in no event later than 110 days after the close of each Fiscal Year of the Company, the Board shall cause the Company to provide each Member, an annual report containing financial statements of the Company for such Fiscal year, presented in accordance with GAAP, including a balance sheet and statements of operations, equity and cash flows, such statements to be audited by an independent public accounting firm selected by the Board.

(b) As soon as practicable, but in no event later than 110 days after the close of each fiscal quarter, except the last quarter of each Fiscal Year, the Board shall cause the Company to provide each Member, a report containing unaudited financial statements of the Company including a balance sheet and statements of operations, equity and cash flows, and such other information as the Board determines to be necessary or appropriate.

(c) As soon as practicable, but in no event later than 35 days after the close of each calendar month, the Board shall cause the Company to provide to each Member (a) an update in writing from each of managers under the Management Agreements regarding the operation of the Vessels during the calendar month immediately preceding such calendar month and (b) a summary in writing of any material change or event regarding or involving any Vessel, including, without limitation, such Vessel's condition or operation, during the calendar month immediately preceding such calendar month.

ARTICLE X

ADMISSION OF ADDITIONAL MEMBERS; TRANSFERS.

10.1 Admission of Additional Members. A Person shall be admitted as an additional Member of the Company (each an "***Additional Member***") at the time such Person (or an authorized representative of such Person, if applicable) (i) (A) is issued New Units pursuant to

Section 2.1 or (B) is a Transferee pursuant to a Transfer which has satisfied the conditions of Section 10.2(b); (ii) executes an agreement or any other writing in form satisfactory to the Board, evidencing the intent of such Person to become a Member and to be bound by the provisions of this Agreement (which agreement or other writing may, but need not, consist of a subscription agreement, joinder agreement and/or a counterpart signature page to this Agreement); (iii) makes any Capital Contribution to the Company required to be made as part of the issuance of New Units to such Person; and (iv) enters into such other documentation as the Board may reasonably require. The name, residence, business or mailing address, Percentage Interest and initial Capital Contribution of each Additional Member shall be set forth on the Register.

10.2 Transfers; Right of First Offer, Exit Drag-Along and Roll-Up Transactions.

(a) Transfer Restrictions. No Member shall Transfer any Units or all or any part of the economic, voting or other rights that comprise any interest represented by such Units unless such Member shall have complied with the provisions of Section (b) and (c).

(b) Conditions to Transfer. Except for Transfers pursuant to Sections 10.2(c), 10.2(d), 10.2(e), or 10.6, no Member may Transfer all or any part of its Membership Interest in the Company without the prior unanimous consent of the Board; *provided, however*, that in the cases of Transfers to Permitted Transferees, the Board will not unreasonably withhold or delay its consent; *provided, further* that, except for Transfers pursuant to Sections 10.2(d) or 10.6, the Special Member may not Transfer all or any part of the Special Member Unit without the prior unanimous consent of the Board (including any Transfer to a Permitted Transferee of the Special Member). Notwithstanding the foregoing, no Transfer of all or any part of a Member's Membership Interest (including a Transfer to a Permitted Transferee) may be made unless and until the Board shall have either received or waived (in whole or in part) each of the following (to the extent applicable to the proposed Transfer):

(i) an opinion of counsel (who may be counsel for the Company), reasonably satisfactory in form and substance to the Board to the effect that (A) such Transfer would not violate any securities laws applicable to the Company or the Units to be transferred or (B) such Transfer would not subject the Company to any law or regulation to which it would not otherwise be subject immediately prior to such Transfer;

(ii) the agreement in writing of such Transferee to comply with all of the terms and provisions of this Agreement;

(iii) an investor questionnaire, or such other evidence as may be reasonably requested by the Board, establishing the qualification of the Transferee as an Accredited Investor; and

(iv) any other information or documents as may be reasonably requested by the Board.

(c) Right of First Offer.

(i) Prior to the consummation a Qualifying IPO, and subject to the terms and conditions specified in this Section 10.2(c), each Member shall have a right of first offer if any other Member (the "***Offering Member***"), proposes to sell any Equity Interests (the "***Offered Units***") owned by it to any Independent Third Party. Each time the Offering Member proposes to Transfer any Offered Units (other than Transfers to a Permitted Transferee and Transfers made pursuant to Section 10.2(d)), the Offering Member shall first make an offering of the Offered Units to the other Members in accordance with the following provisions of this Section 10.2(c).

(ii) Offer Notice.

A. The Offering Member shall give written notice (the "***Offering Member Notice***") to the other Members stating its bona fide intention to Transfer the Offered Units and specifying the number of Offered Units the Offering Member proposes to Transfer.

B. By delivering the Offering Member Notice, the Offering Member represents and warrants to each other Member that: (x) the Offering Member has full right, title and interest in and to the Offered Units; (y) the Offering Member has all the necessary power and authority and has taken all necessary action to sell such Offered Units as contemplated by this Section 10.2(c); and (z) the Offered Units are free and clear of any and all Liens other than those arising as a result of or under the terms of this Agreement.

(iii) Exercise of Right of First Offer.

A. Upon receipt of the Offering Member Notice, each Member shall have a period of 10 Business Days (the "***ROFO Notice Period***") to deliver to the Offering Member a written offer to purchase all (but not less than all) of the Offered Units identified in the Offering Member Notice (the "***ROFO Offer Notice***"). The ROFO Offer Notice shall be binding on the Member who delivered it and irrevocable for a period of 20 Business Days after delivery of the same to the Offering Member, and shall specify the cash purchase price per Offered Unit (the "***Per Offered Unit Purchase Price***") at which the Member delivering the ROFO Offer Notice is willing to purchase the Offered Units and all other material terms and conditions relating to such offer.

B. If more than one Member delivers a ROFO Offer Notice, the Offering Member shall have the right, but not the obligation, to accept the ROFO Offer Notice containing the highest Per Offered Unit Purchase Price by delivering a written, acceptance notice (the "***Acceptance Notice***") to the Member who delivered such ROFO Offer Notice (such Member, the "***Purchasing Member***"). If one or more Members deliver the same highest Per Offered Unit Purchase Price, each such Member will be provided with two Business Days to increase its Per Offered Unit Purchase Price and in the event that such Members continue to have the same highest Per Offered Unit Purchase Price, the Offering Member shall be permitted to select in its own discretion among such ROFO Offer Notices.

C. Each Member that does not deliver a ROFO Offer Notice during the ROFO Notice Period shall be deemed to have waived all of such Member's rights to purchase the Offered Units under this Section 10.2(c) with respect to such Offering Member Notice.

(iv) Consummation of Sale. If (A) no Member delivers a ROFO Offer Notice in accordance with Section 10.2(c)(iii) or (B) one or more Members deliver a ROFO Offer Notice, but the Offering Member does not desire to accept the terms included such ROFO Offer Notice, the Offering Member may, at any time during the 60 Business Day period following the expiration of the ROFO Notice Period (the "***Waived ROFO Transfer Period***"), Transfer all of the Offered Units to an Independent Third Party; provided that the Offering Member may not Transfer the Offered Units to an Independent Third Party on terms and conditions which, taken as a whole, are materially more favorable to the Independent Third Party than those specified in the ROFO Offer Notice containing the highest Per Offered Unit Purchase Price; provided, further, that Offering Member may not Transfer the Offered Units to an Independent Third Party unless such Independent Third Party offers a cash purchase price per Offered Unit that exceeds the highest Per Offered Unit Purchase Price by at least 3%. If the Offering Member does not Transfer the Offered Units within the Waived ROFO Transfer Period, the right provided hereunder shall be deemed to be revived and the Offered Units shall not be offered to any Person unless first re-offered to the Members in accordance with this Section 10.2(c).

(v) Cooperation. In the event an Offering Member delivers an Acceptance Notice, the Offering Member and the Purchasing Member shall take all actions as may be reasonably necessary to consummate the sale contemplated by this Section 10.2(c) including, without limitation, entering into agreements and delivering certificates and instruments and consents as may be deemed necessary or appropriate.

(vi) Closing. At the closing of any sale and purchase pursuant to this Section 10.2(c), the Offering Member shall deliver to the Purchasing Member(s) certificate or certificates representing the Offered Units to be sold (if any), accompanied by evidence of transfer and all necessary transfer taxes paid and stamps affixed, if necessary, against receipt of the purchase price therefor from such Purchasing Member(s) by certified or official bank check or by wire transfer of immediately available funds.

(vii) The restrictions, covenants and agreements of Sections 10.2(d) shall terminate upon the completion of a Qualifying IPO.

(d) Exit Drag-Along Transaction.

(i) Subject to Section 3.6 and 10.2(c), at any time after September 30, 2018 and prior to the consummation a Qualifying IPO, a Majority-in-Interest of the Preferred Members may elect to cause:

A. a consolidation or merger of the Company with or into any other business entity or other corporate reorganization;

B. a sale of all or any portion of the outstanding Units of all of the Members; or

C. a transaction in which all or substantially all of the assets of the Company are sold, leased or otherwise disposed of.

(each of the transactions described in clauses (A), (B) and (C) above are referred to herein as a "***Drag-Along Transaction***"); *provided* that an Affiliate of a Preferred Member may not be the counterparty in a Drag-Along Transaction unless such Drag-Along Transaction is approved by Members representing at least 80% of the outstanding Units or the Drag-Along Representative obtains a Fairness Opinion. For purposes of clarification, a Roll-Up Transaction shall not constitute a Drag-Along Transaction hereunder.

(ii) If a Majority-in-Interest of the Preferred Members elect to pursue a Drag-Along Transaction:

A. a Preferred Member designated by such Majority-in-Interest of the Preferred Members ("***Drag-Along Representative***") may exclusively identify, negotiate, structure and otherwise pursue the Drag-Along Transaction, which Drag-Along Transaction may be structured and accomplished as determined by the Drag-Along Representative in its sole discretion, whether as a merger, consolidation, sale of Units, corporate reorganization, sale of assets or otherwise; and

B. the Drag-Along Transaction shall be effected on the terms and conditions negotiated by the Drag-Along Representative, including any terms imposing on the Members obligations with respect to indemnities, escrows, holdbacks or other contingent obligations that are applicable to all Members, *provided*, that in each case, the Drag-Along Representative complies with the provisions of this Section 10.2(d); *provided, further* that any post-closing covenants imposed on the Members as a result of a Drag-Along Transaction will apply proportionately to all Members.

(iii) The Members shall have no consent, voting or appraisal rights with respect to a Drag-Along Transaction and shall have no right to object to a Drag-Along Transaction.

(iv) In connection with any Drag-Along Transaction, each of the Members shall, if requested by the Drag-Along Representative, waive any dissenters' rights, appraisal rights or similar rights which such Member may have in connection therewith.

(v) At least 15 Business Days prior to consummating a Drag-Along Transaction, the Drag-Along Representative shall deliver to each of the Members written notice (a "***Drag-Along Notice***") which shall state (A) that the Drag-Along Transaction has been structured in a manner that complies with this Section 10.2(d), (B) the consideration to be received by the Company and its Members in the Drag-Along Transaction ("***Drag-Along Consideration***") and (C) all other material terms and conditions of the Drag-Along Transaction (including the identity of the purchaser), and shall be accompanied by drafts of any written transaction agreements to be entered into in connection with the Drag-Along Transaction to the extent available at such time.

(vi) Notwithstanding the foregoing, any Drag-Along Transaction effected pursuant to this Section 10.2(d) shall comply with the following:

A. in the event that the Drag-Along Transaction involves a sale of Units by the Members then, at the closing of the Drag-Along Transaction, against payment of the purchase price of the Units to be sold in the Drag-Along Transaction, each Member will sell all or a pro rata portion of the Units it holds (determined on an As Converted to Common Basis) equal to the percentage of Units to be sold in the Drag-Along Transaction. For example if the total percentage of Units to be sold in the Drag-Along Transaction is equal to 80% of the total outstanding Units, each Member will be required to sell 80% of its Units in the Drag-Along Transaction;

B. the terms of the Drag-Along Transaction shall treat all Members in a like manner other than as required to give effect to the rights, preferences and privileges of each separate Class of Units and, subject to such preferences, proportional to each Member's respective Units held; and

C. each Member hereby makes, constitutes and appoints the Drag-Along Representative, with full power of substitution and re-substitution, its true and lawful attorney, for it and in its name, place and stead and for its use and benefit, to act as its proxy in respect of any vote or approval of Members required to give effect to this Section 10.2(d), including any vote or approval required under Section 17 of the Act and any waiver contemplated by Section 10.2(d)(iv). The proxy granted pursuant to this Section 10.2(d)(iv) is a special proxy coupled with an interest and is irrevocable.

(vii) Each of the Members participating in a Drag-Along Transaction (collectively, the "***Participating Sellers***"), whether in its capacity as a Participating Seller, Member or otherwise, shall take or cause to be taken all such actions as may be reasonably necessary or desirable in order expeditiously to consummate such Drag-Along Transaction and any related transactions, including, without limitation, executing, acknowledging and delivering consents, assignments, waivers and other documents or instruments; furnishing information and copies of documents; filing applications, reports, returns, filings and other documents or instruments with governmental authorities; and otherwise fully cooperating with the Drag-Along Representative; *provided, however*, that Participating Sellers shall be obligated to become liable in respect of any representations, warranties, covenants, indemnities in connection with such Transaction solely to the extent provided in the immediately following sentence. Without limiting the generality of the foregoing, each Participating Seller agrees to execute and deliver such agreements as may be reasonably specified by the Drag-Along Representative to which all Participating Sellers will also be party, including, without limitation, agreements to (A) make individual representations, warranties, covenants and other agreements as to the unencumbered title to its Units and the power, authority and legal right to Transfer such Units, (B) provide representations and warranties relating to good title to Vessels, (C) provide other reasonable and customary representations, warranties and indemnities and (D) be severally (with all other sellers) liable (whether by purchase price adjustment, escrows, holdbacks, indemnity payments, contingent obligations or otherwise) in respect of representations, warranties, covenants and agreements in respect of the Company and its Subsidiaries to the same extent as the Drag-Along Representative; *provided, however* that, except with respect to representations, warranties, covenants, indemnities and other agreements of Participating Sellers of the type described in clauses (A) and (B) above and indemnities that are customarily uncapped in nature in similar transactions, including with respect to taxes relating to pre-closing periods, the aggregate amount of such liability shall

not exceed either (1) such Participating Seller's pro rata portion of any such liability, to be determined in accordance with such Participating Seller's portion of the aggregate proceeds to all Members in connection with such Drag-Along Transaction or (2) the proceeds to such Participating Seller in connection with such Drag-Along Transaction.

(viii) The closing of a Drag-Along Transaction shall take place at such time and place as the Drag-Along Representative shall specify by reasonable notice to each Participating Seller. At the closing of a Drag-Along Transaction, each Participating Seller shall deliver any documentation evidencing the Units to be sold (if any) by such Participating Seller and the assignment thereof, free and clear of any Liens, against delivery of the applicable consideration.

(ix) In connection with any Drag-Along Transaction, the Participating Sellers shall receive the Drag-Along Consideration, after deduction of the proportionate share of (A) the reasonable and documented expenses associated with such sale or Drag-Along Transaction, including the reasonable legal fees of the Company, the Drag-Along Representative and each Participating Seller, and reasonable brokers fees and other commissions and any other expenses incurred by the Drag-Along Representative in connection with such Drag-Along Transaction, including a Fairness Opinion, (B) amounts paid into escrow or held back, in the reasonable determination of the Drag-Along Representative, for indemnification or post-closing expenses and (C) amounts subject to post-closing purchase price adjustments; *provided* that upon determination of such purchase price adjustment or indemnification or post-closing expenses and upon release of any such escrow or hold-back, as applicable, such amounts will be distributed to the Participating Sellers so that the total amount distributed is in accordance with the provisions of Section 10.2(d)(x).

(x) The consideration to be paid to each Member in a Drag-Along Transaction shall be calculated by treating such Drag-Along Transaction as a liquidation of the Company in which all of the assets of the Company (including goodwill) were sold in exchange for the Drag-Along Consideration (including any deemed assumption of liabilities), as the case may be, and the proceeds of that sale, together with the Profits, Losses, items of income, gain, loss and deduction, and distributions were applied, allocated and distributed in accordance with the principles and priorities set forth in Section 8.1; *provided, however*, that in the case of a Drag-Along Transaction involving a sale of less than all of the Units, such amounts will be computed based upon the portion of the total enterprise value of the Company Transferred in such Drag-Along Sale.

(xi) The restrictions, covenants and agreements of Sections 10.2(c) shall terminate upon the completion of a Qualifying IPO.

(e) Preferred Unit Exit.

(i) During a Non-Class B-2 Period and provided that BX, Blackstone Family and BTO SMD are Substantially Funded and prior to the consummation a Qualifying IPO, subject to Section 10.2(c), the Preferred Members may Transfer to any Person that is not an Ineligible Person all or a portion (but not less than twenty percent (20%)) of the Preferred Units in accordance with the terms of this Agreement; provided, however, that any transferee pursuant to this Section 10.2(e) shall be treated as a Permitted Transferee for purposes of Section 3.3(b).

(ii) Notwithstanding anything to the contrary set forth in this Agreement, during the Class B-2 Period prior to the consummation a Qualifying IPO, the restrictions on the Transfer of Units set forth in this Agreement shall not apply to the Preferred Members or the Preferred Units held by the Preferred Members, and such Preferred Members may Transfer to any Person that is not an Ineligible Person any Preferred Units; provided, however, that any transferee pursuant to this Section 10.2(e) shall be treated as a Permitted Transferee for purposes of Section 3.3(b). The Company and the Board will use commercially reasonable efforts to provide support to the Preferred Members in connection with the marketing and Transfer to transferees and potential transferees, including, without limitation, and subject to appropriate non-disclosure agreements, providing financial information, causing members of the Board and members of the Group Companies' management teams to be available (at reasonable times upon reasonable requests) to potential transferees and coordinating inspections of the Vessels. The restrictions, covenants and agreements of this Section 10.2(e) shall terminate upon the completion of a Qualifying IPO.

10.3 Effect of Prohibited Transfers. Any Transfer in contravention of any of the provisions of this Agreement shall be void and of no effect, and shall not bind nor be recognized by the Company.

10.4 Admission. Subject to Sections 10.2(a) and 10.2(b), the Transferee of any Units in the Company shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. If the Member transfers all of its Units in the Company pursuant to Section 10.2, such admission shall be deemed effective immediately prior to the transfer and, immediately following such admission, the transferor Member shall cease to be a member of the Company.

10.5 Additional Restrictions on Transfer.

(a) Notwithstanding the foregoing, no Transfer of a Unit may be made if such Transfer would cause a termination of the Company under Code Section 708(b)(l)(B), unless a Majority-in-Interest consents to such Transfer, which consent the Members may withhold in their sole discretion.

(b) Notwithstanding any other provision herein, unless a Majority-in-Interest consents to such Transfer (in its sole discretion), no Transfer may be made if either (i) any portion of the Units were issued in a transaction (or transactions) that was required

to be registered under the Securities Act, or (ii) such Transfer would result in there being more than 80 holders of the Units within the meaning of Code Section 7704 and the regulations promulgated thereunder, as reasonably determined by the Board, or (iii) such Transfer would cause the Company to be treated as a publicly traded partnership within the meaning of Code Section 469(k)(2) or 7704. For purposes of determining the number of holders of Units, a Person owning an interest in an entity treated for United States federal income tax purposes as a partnership, grantor trust or S corporation (each, a "***Flow-Through Entity***") that owns directly, or through other Flow-Through Entities, is treated as a holder of a Units if 50% or more of the value of such owner's interest in the Flow-Through Entity is attributable to the Flow-Through Entity's direct or indirect ownership of the Units. If the Transferee is a Flow-Through Entity, it must accurately disclose to the Company in writing the beneficial ownership of such Flow-Through Entity. The Board and the Members may rely on information provided from a purchaser or transferee of the Units in making a determination as to the number of holders of Units pursuant to the provisions of the preceding sentence.

(c) If such Member or any Person for which it was acting is determined not to have been a Person permitted to hold Units under any of the transfer restrictions applicable to the Units (any such Person, a "***Non-Permitted Member***"), the Company shall have the right to compel such Non-Permitted Member to sell its Units within 30 days after notice of the sale requirement is given to such Non-Permitted Member. If such Non-Permitted Member fails to effect the sale within such 30-day period, the Company shall have the right to cause such Units to be transferred in a commercially reasonable sale to a Transferee that is approved by a Majority-in-Interest of the non-transferring Members.

10.6 Roll-Up Transaction.

(a) If (i) a Majority-in-Interest of the Common Units and a Majority-in-Interest of the Preferred Units, or (ii) at any time after September 30, 2018, a Majority-in-Interest of Preferred Units, as applicable, desire to cause:

(i) a transfer of (A) all or a substantial portion of the assets of the Company or (B) all of the outstanding Units, in each case to a newly organized corporation or other business entity ("***Newco***");

(ii) a merger or consolidation of the Company into or with a Newco as provided under Section 17 of the Act or otherwise; or

(iii) a restructuring of all or substantially all of the assets or Membership Interests of the Company into a Newco,

in each case, in anticipation of an initial public offering of securities of a Newco or any of its affiliates (an "***Initial Public Offering***," and such transactions in anticipation of an Initial Public Offering, a "***Roll-Up Transaction***"), each Member shall take such steps to effect such transfer, merger, consolidation or other restructuring as may be requested by the Preferred Members, including, without limitation, transferring or tendering such

Member's Membership Interests to a Newco in exchange or consideration for Equity Interests of Newco, determined in accordance with the valuation procedures set forth in Section 10.6(b). Until such time as any class of Equity Interests of the Newco are registered under the Securities Act (or other applicable laws relating to the exchange on which Equity Interests are listed), such Equity Interests shall be subject to (1) restrictions on, and have rights with respect to, Transfer (2) the provisions contained herein with respect to a Drag-Along Transaction, and (3) such other rights and obligations of the Member as are substantially the same as those set forth in this Agreement, in each case, that are substantially the same as those contained in this Agreement, to the extent applicable.

(b) In connection with a Roll-Up Transaction, the Board shall engage an Appraiser to determine, in good faith, the fair market value of the assets and/or Equity Interests transferred to or merged into Newco, the aggregate fair market value of Newco and the number of shares or units of Equity Interests to be issued to each Member in exchange or consideration therefore. In the event that a Member's Units are to be converted into Equity Interests in a Newco, the Board will determine the net proceeds ("***Deemed Distributable Amount***") each Member would receive in a liquidation of the Company if an amount equal to such fair market value of Newco were distributed to the Members in accordance with Section 8.1. Each Member will receive a pro rata portion of Newco Equity Interests based upon the ratio its Deemed Distributable Amount bears to the aggregate Deemed Distributable Amounts of all Members. Such determination shall, when approved by the Board, be binding on all of the Members for all purposes under this Agreement so long as such determination treats all Members in a like manner in accordance with the rights, preferences and privileges of the Class of Units held by them and proportionate to the number of Units held.

(c) In connection with a Roll-Up Transaction, the certificate of incorporation, bylaws and/or other organizational documents of Newco shall be in a customary form in accordance with the Republic of Marshall Islands Law, or such other jurisdiction, as approved by the Board and a Majority-in-Interest.

(d) Each Member hereby makes, constitutes and appoints a Person designated in writing by a Majority-in-Interest of the Preferred Units, with full power of substitution and resubstitution, its true and lawful attorney, for it and in its name, place and stead and for its use and benefit, to act as its proxy in respect of any vote or approval of Members required to give effect to this Section 10.6, including any vote or approval required under Section 17 of the Act. The proxy granted pursuant to this Section 10.6(d) is a special proxy coupled with an interest and is irrevocable.

10.7 IPO.

(a) If, (i) a Majority-in-Interest of the Common Units and a Majority-in-Interest of the Preferred Units, or (ii) at any time after September 30, 2018, a Majority-in-Interest of Preferred Units (in each case, the "***Initiating Members***") provides a written request to the Company requesting that Newco file a registration statement

under the Securities Act in connection with a Qualifying IPO, the Company will, and will cause Newco to:

(i) within ten (10) days of receipt thereof, give written notice of the proposed registration to all other Members;

(ii) as soon as practicable, use its reasonable best efforts to effect such registration and all such qualifications and compliances as would permit or facilitate the sale and distribution of all or such portion of the Members' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Member joining in such request as are specified in a written request given within fifteen (15) days after delivery of the written notice referenced in clause (i) above; and

(iii) use its reasonable best efforts to file a registration statement covering the Registrable Securities as soon as practicable, and in no event more than thirty (30) days, after receipt of the final request or requests (as permitted by this Section 10.7) of the Members.

(b) All Members proposing to distribute their securities through such Initial Public Offering shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Initiating Members (which underwriter or underwriters shall be reasonably acceptable to the Company).

(c) Upon the request of the Company and the underwriter(s) of a Qualifying IPO, a Member shall not effect any public sale or distribution (including sales pursuant to Rule 144 under the Securities Act) of Registrable Securities during the seven days prior to and the 180-day period beginning on the effective date of such Qualifying IPO; provided that all officers, directors and greater than one percent stockholders are subject to substantially similar restrictions, and provided further that, if the underwriter(s) release any stockholder from such restrictions prior to the expiration of the 180-day period, then each Member shall also be released from such restrictions for its pro rata share of Registrable Securities being released.

(d) Notwithstanding anything to the contrary set forth in Section 10.7(a)(ii), if the managing underwriter for the Qualifying IPO advises the Company or Newco, as applicable, that the inclusion of all Registrable Shares proposed to be included in such registration by the Members would interfere with the successful marketing (including pricing) of such Registrable Securities to be offered thereby, then the number of such Registrable Securities proposed to be included in such registration by each Member shall be reduced to the number of such Registrable Securities that the managing underwriter advises such Members may sell in the Qualifying IPO.

(e) If the Initiating Members determine that it is advisable for Newco to consummate the Qualifying IPO in a jurisdiction other than the United States or to list the securities on an exchange or have them quoted in a jurisdiction other than the United States, then the Initiating Members can so elect by delivering a written notice to

the Company in connection with the exercise of their demand rights under Section 10.7(a). In such case, then this Section 10.7 shall apply using the applicable laws, rules and regulations of the applicable jurisdictions *mutatis mutandis*.

10.8 Deadlock; Buy-Sell.

(a) Deadlock. Notwithstanding anything to the contrary contained in this Agreement, if at any time following the third anniversary of the Second Restatement Effective Date during a Non-Class B-2 Period, (i) the two BX Directors approve a matter of the type set forth in clause (c) of Schedule VI and the disagreement over the proposed Approved Budget is material in amount or scope to the Group Companies (taken as a whole), and one or more Eletson Director fails to approve such matter or (ii) the two Eletson Directors approve a matter of the type set forth in clause (a)(ii) of Schedule VI, or clause (c) of Schedule VI and the disagreement over the proposed Approved Budget is material in amount or scope to the Group Companies (taken as a whole), and one or more BX Director fails to approve such matter, in each case, within 140 days of the approval by the BX Directors or Eletson Directors, as applicable (a "***Deadlock***"), the Member whose Directors approved such matter may give written notice to the other Member notifying such Member of the Deadlock. The sole purpose of such notice shall be to establish the date of the Deadlock for purposes of this Section 10.8.

(b) Buy-Sell Mechanism.

(i) Upon the occurrence of a Deadlock, a Member (in such capacity, the "***Sending Member***") shall have the right to deliver a written notice (the "***Buyout Notice***") to the Company and the other Members (the "***Receiving Members***") stating that the Receiving Members may either sell all of the Receiving Members' Membership Interest to the Sending Member or purchase all of the Sending Member's Membership Interest, in each case, for the cash purchase price (the "***Purchase Price***") set forth in the Buyout Notice. The Buyout Notice will specify an enterprise value for the Company and the Purchase Price for each Member's Membership Interest which will be computed based upon net proceeds which would be received by each such Member in connection with a distribution of an amount equal to such enterprise value to the Members in accordance with Section 8.1. Upon delivery of the Buyout Notice, the Receiving Members' right to deliver a Buyout Notice shall be suspended. A Member shall only have the right to deliver a Buyout Notice if its appointed Directors have engaged, or made good faith efforts to engage, in good faith negotiations to resolve the Deadlock.

(ii) Within 30 days after receipt of the Buyout Notice, the Receiving Members shall deliver written notice (the "***Buyout Acceptance Notice***") to the Sending Member stating whether it will sell all of their Membership Interest to the Sending Member or purchase all of the Sending Member's Membership Interest for the Purchase Price set forth in the Buyout Notice. If the Receiving Members do not timely deliver a Buyout Acceptance Notice, the Sending Member

shall have the right to make the election to purchase the Receiving Members' Membership Interest or sell the Sending Member's Membership Interest for the applicable Purchase Price for such Membership Interest set forth in the Buyout Notice by delivery of written notice to the Company and the Receiving Members. If the Sending Member does not deliver such notice within 10 Business Days after the date on which the Buyout Acceptance Notice was due, the Buyout Notice shall expire and neither Member shall be obligated to purchase or sell its respective Membership Interests pursuant to this Section 10.8 without the issuance of a new Buyout Notice in accordance with this Section 10.8.

(iii) The closing of the purchase of the Membership Interests pursuant to this Section 10.8 shall occur no later than 60 days after the receipt by the Receiving Members of the Buyout Acceptance Notice. At the closing, the following will occur:

D. The selling Member will assign all of its Membership Interests to the purchasing Member without representation or warranty, express or implied, except that selling Member represents and warrants to the Company and each other Member that: (x) the selling Member has full right, title and interest in and to the membership Interests; (y) the selling Member has all the necessary power and authority and has taken all necessary action to sell such Membership Interests as contemplated by this Section 10.8; and (z) the Membership Interests are free and clear of any and all Liens other than those arising as a result of or under the terms of this Agreement.

E. The purchasing Member shall pay to the selling Member, in cash, the Purchase Price for the selling Member's Membership Interests.

(iv) The procedure set forth in this Section 10.8 shall be the exclusive remedy for resolving any Deadlock; provided that the Members shall have the right to continue good faith negotiations regarding such Deadlock after delivery of the Buyout Notice. If the Members reach a resolution of such Deadlock after delivery of the Buyout Notice, then the Sending Member shall cancel the Buyout Notice.

ARTICLE XI

DISSOLUTION AND WINDING UP OF THE COMPANY

11.1 Dissolution.

(a) During a Non-Class B-2 Period, subject to Section 3.2, there shall be a dissolution of the Company and its affairs shall be wound up upon the first to occur of any of the following events:

(i) with respect to any dissolution that is not entered into in connection with a restructuring or insolvency proceeding, the decision of Members representing 80% of the outstanding Units of the Company (excluding the Special Member Unit);

(ii) with respect to any dissolution entered into in connection with a restructuring or insolvency proceeding, the decision of Members representing a Majority-in-Interest of the Preferred Units; or

(iii) the entry of a decree of judicial dissolution of the Company pursuant to Section 47 of the Act.

(b) During the Class B-2 Period, there shall be a dissolution of the Company and its affairs shall be wound up upon the first to occur of any of the following events:

(i) the decision of Members representing 80% of the outstanding Units of the Company (excluding the Special Member Unit); or

(ii) the entry of a decree of judicial dissolution of the Company pursuant to Section 47 of the Act.

11.2 Winding Up. Upon the dissolution of the Company, the Board (or (i) during a Non-Class B-2 Period, any Person designated by a Majority-in-Interest, or (ii) during the Class B-2 Period, or any Person designated by a Majority-in-Interest of the Preferred Units) shall use all commercially reasonable efforts to liquidate all of the Company's assets and wind up the affairs of the Company in an orderly manner; *provided* that if in the judgment of the Board, an asset of the Company should not be liquidated, the Board shall allocate, on the basis of the Gross Asset Value of any assets of the Company not sold or otherwise disposed of, any unrealized gain or loss based on such Gross Asset Value to the Members' Capital Accounts as though the assets in question had been sold on the date of such allocation and, after giving effect to any such adjustment, distribute such assets in accordance with Section 11.3, subject to the priorities set forth in Section 11.3, and *provided*, *further*, that the Board (or such other representative appointed by (i) during a Non-Class B-2 Period, a Majority-in-Interest, or (ii) during the Class B-2 Period, a Majority-in-Interest of the Preferred Units) will attempt to liquidate sufficient Company assets to satisfy in cash (or make reasonable provision in cash for) the debts and liabilities referred to in Section 11.3.

11.3 Final Distribution. After the application or distribution of the proceeds of the liquidation of the Company assets in one or more installments to the satisfaction of the liabilities to creditors of the Company, to the extent permitted by applicable law, including to the satisfaction of the expenses of the winding-up, liquidation and dissolution of the Company (whether by payment or the making of reasonable provision for payment thereof), the remaining proceeds, if any, plus any remaining assets of the Company shall be distributed in accordance with the provisions of Section 8.1.

11.4 Time for Liquidation, etc.. A reasonable time period shall be allowed for the orderly winding up and liquidation of the assets of the Company and the discharge of liabilities to creditors so as to enable the Company to seek to minimize potential losses upon such liquidation. The provisions of this Agreement shall remain in full force and effect during the period of winding up and until the filing of a certificate of cancellation of the Certificate of Formation.

11.5 Termination. Upon completion of the items described in this Article XI, the Board (or any duly designated representative appointed by (i) during a Non-Class B-2 Period, a Majority-in-Interest, or (ii) during the Class B-2 Period, a Majority-in-Interest of the Preferred Units) or such other Person as required by the Act, shall execute, acknowledge and cause to be filed a certificate of cancellation of the Certificate of Formation.

ARTICLE XII

MISCELLANEOUS

12.1 Amendments. Subject to Section 12.1(a), this Agreement may be amended or modified in a writing signed by the Company with the consent of (i) during a Non-Class B-2 Period, 80% of the outstanding Units of the Company and a Majority-in-Interest of the Preferred Units, or (ii) during the Class B-2 Period, a Majority-in-Interest of the Preferred Units.

(a) Notwithstanding anything to the contrary in this Section 12.1:

(i) The Company may amend the Register without the consent of the Members upon any change in the number of Units held by the Members, or to reflect the admission of any new Member, each in accordance with the terms of this Agreement.

(ii) A copy of each proposed amendment or modification must be delivered to each Member prior to (A) such amendment or modification or (B) consent being sought in respect of an amendment or modification (as applicable). No Member shall be deemed to have provided its consent under this Section 12.1 unless such consent is provided in writing.

(iii) During the Class B-2 Period, the consent of Eletson shall be required for any amendment or modification to this Agreement that would have the effect of (i) creating any additional requirement of Eletson to make Capital Contributions to the Company, (ii) modifying any voting threshold or approval right held by Eletson, (iii) materially and adversely change the express rights of

Eletson set forth herein, other than as a result of dilution due to the issuance of additional Equity Interests.

(iv) Until the Special Member Unit has been cancelled, the consent of the Special Member shall be required for any amendment or modification to this Agreement that would materially and adversely change the distributions to the Special Member pursuant to Section 8.1.

12.2 Notices. Each notice relating to this Agreement shall be in writing and shall be delivered (a) in person, by registered or certified mail or by private courier or (b) by facsimile, electronic mail, or other electronic means. All notices to any Member shall be delivered to such party at his, her or its address as set forth in the records of the Company. Any Member may designate a new address for notices by giving written notice to that effect to the Board and each other Member. The Board may designate a new address for notices to the Company by giving written notice to that effect to each of the Members. A notice given in accordance with the foregoing clause (a) shall be deemed to have been effectively given three Business Days after such notice is mailed by registered or certified mail, return receipt requested, one Business Day after such notice is sent by Federal Express or other one-day service provider, to the proper address, or at the time delivered when delivered in person or by private courier. Any notice by facsimile, electronic mail, or other electronic means shall be deemed to have been effectively given when sent.

12.3 Confidentiality.

(a) Each Member acknowledges that Proprietary Information may be disclosed to Representatives of such Persons in connection with the business and operations of the Company. Without limiting the applicability of any other agreement to which any Member or is subject, no Member shall, directly or indirectly, disclose or use (other than solely for the purposes of such Member monitoring and analyzing his investment in the Company or performing his duties as a Member, Director, Officer, employee, consultant or other service provider of the Company), any Proprietary Information of which such Member is or becomes aware. Each Member in possession of Proprietary Information shall take all appropriate steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss and theft. Notwithstanding the foregoing, Members shall be permitted to share information relating to the Group Companies with potential investors or transferees of the Group Companies' assets or equity subject to the obligation of such disclosing Member to enter into appropriate non-disclosure agreements with such potential investor or transferee in form reasonably satisfactory to such Member which includes customary protections for the safeguarding and nondisclosure by such potential investor or transferee of such information; provided, however that for the avoidance of doubt, the Members acknowledge that any Transfer of Units by a Member must be made in compliance with Section 10.2.

(b) Each Member agrees to advise its Representatives that the Proprietary Information is highly confidential and that by receiving such information such Representatives are agreeing to be bound by the confidentiality provisions contained in this Agreement and not to use such information for any purpose other than as described

herein or contemplated hereby. Each Member shall be responsible for any breach of this Section 12.3 by its Representatives. Without the Board's prior written consent, no Member will disclose the Proprietary Information in whole or in part except as permitted by this Section 12.3.

(c) In the event that any Member or its Representatives are required by law, regulators, regulatory authority or by interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process to disclose any Proprietary Information, to the extent reasonably practicable, each such party agrees to provide the Company with prompt written notice of such request or requirement so that the Company may seek an appropriate protective order prior to the disclosure of such information. In the absence of a protective order, each party hereto agrees, and agrees to cause its Representatives, to disclose only that portion of the Proprietary Information which such party is advised by counsel is required, and each such party agrees to exercise commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such Proprietary Information.

(d) Notwithstanding any other provision of this Agreement, from the commencement of discussions with respect to the transactions contemplated hereby, each Member and its respective Representatives may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure (as such terms are used in Code Sections 6011, 6111, and 6112 and the Treasury Regulations promulgated thereunder) of any transaction contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided relating to such tax treatment and tax structure.

(e) The obligations of confidentiality in this Section 12.3 will survive the termination of this Agreement for a period of the earlier of (x) two years from such termination and (y) such time as the applicable Proprietary Information enters the public domain through no fault of the relevant party or of any other person owing a duty of confidentiality to the Company.

(f) A Member which ceases to be a Member shall, if requested to do so by the Company within 3 months of its ceasing to be a Member, hand over to the Company or destroy (at such former Member's option) all Proprietary Information, documents and correspondence belonging to or relating to the business of the Company (and any copies thereof in its possession), save for any such confidential information which the Member is required to retain by applicable laws, rules, regulations or legal process or any internal document retention policies or compliance procedures or which is automatically retained by internal electronic back-up systems.

12.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single agreement. Delivery of a copy of this Agreement bearing an original signature by facsimile transmission or by electronic mail in ".pdf" format, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as a physical delivery of the paper document bearing the original signature.

12.5 Table of Contents and Headings. The table of contents and the headings of the articles, Sections and subsections of this Agreement are inserted for convenience of reference only and shall not be deemed to constitute a part hereof or affect the interpretation hereof.

12.6 Successors and Assigns. This Agreement shall inure to the benefit of the Members and the Covered Persons, and shall be binding upon the parties, and, subject to Section 10.2, their respective successors, permitted assigns and, in the case of individual Covered Persons, heirs and legal representatives.

12.7 Severability. Every term and provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such term or provision will be enforced to the maximum extent permitted by law and, in any event, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

12.8 Further Actions. Each Member shall execute and deliver such other certificates, agreements and documents, and take such other actions, as may reasonably be requested by the Board in connection with the achievement of its purposes or to give effect to the provisions of this Agreement, in each case as are not inconsistent with the terms and provisions of this Agreement, including any documents that the Board determines to be necessary or appropriate to form, qualify or continue the Company as a limited liability company in all jurisdictions in which the Company conducts or plans to conduct its investment and other activities and all such agreements, certificates, tax statements and other documents as may be required to be filed by or on behalf of the Company.

12.9 Compliance.

The Company agrees to comply with its respective obligations set forth on Schedule IV hereto.

12.10 Eletson Covenant.

For so long as any obligations remain outstanding under the Amended Unicredit Loan (as defined in the Contribution Agreement) or the Amended DvB Loan (as defined in the Contribution Agreement), Eletson and the Special Member agree not to permit any change in the legal and/or ultimate beneficial ownership of any of the shares in the Manager or in the ultimate control of the voting rights attaching to such shares in a manner that would breach clause 19(i)(C) of the Facility Agreement for the Amended Unicredit Loan dated as of date hereof and/or clause 19(j)(C) of the Facility Agreement for the Amended DvB Loan dated as of date hereof.

12.11 Tax Matters.

(a) FATCA. The Board shall use commercially reasonable effort to determine whether the Company is a foreign financial institution within the meaning of Section 1471(d)(5) of the Code. If the Board determines that the Company is a foreign financial institution:

(i) the Company shall (A) register with the U.S. Internal Revenue Service ("***IRS***") pursuant to procedures prescribed by the IRS and enter into an agreement with the Internal Revenue Service relating to FATCA or (B) if an intergovernmental agreement relating to FATCA is concluded between the United States and Greece, comply with the terms of such agreement, and

(ii) the Company shall obtain from each Member (and each Member shall provide to the Company) such information, including information as to the identity and direct or indirect ownership of such Member, as necessary to comply with FATCA and to avoid withholding thereunder.

If the Board determines that the Company is not a foreign financial institution within the meaning of Section 1471(d)(5) of the Code, the Company shall comply and each Member shall provide the Company with such information as is necessary to enable the Company to comply, with the requirements of Section 1472(b) of the Code and the Treasury Regulations promulgated thereunder and to avoid withholding thereunder. The Company shall take any other actions (and each Member agrees to cooperate, including providing information to enable the Company to take action) as necessary to comply with FATCA and to avoid withholding thereunder. "***FATCA***" means Sections 1471 through 1474 of the Code, as amended from time to time, any current or future regulations or official interpretations thereof, and any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any intergovernmental agreements and fiscal or regulatory legislation, rules or official interpretations adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of Sections 1471 through 1474 of the Code.

(b) Section 883 Substantiation. Each Member agrees that, in the event the Shipcos or any other Subsidiary of the Company become ineligible for a complete exemption from U.S. federal income tax on shipping income under the Convention between the United States and Greece for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed February 20, 1950, as amended (the "***Treaty***"), whether as a result of changes to the Treaty, the entering into force of a new treaty or otherwise, the Company shall obtain information from each Member, and each Member agrees to provide such information, so as to enable each Shipco and such other Subsidiaries of the Company to claim the exemption under Section 883 of the Code.

(c) U.S. Tax Elections. Within thirty (30) days after the Initial Closing Date, the Company shall file with the IRS a properly completed and duly signed IRS Form 8832 for each Shipco electing to classify such Shipco as a corporation for U.S. federal income tax purposes effective as of, or before, the Initial Closing Date.

12.12 Non-Waiver. No provision of this Agreement shall be deemed to have been waived unless such waiver is given in writing, and no such waiver shall be deemed to be a waiver of any other or further obligation or liability of the party or parties in whose favor such waiver was given.

12.13 Applicable Law. TO THE FULLEST EXTENT PERMITTED UNDER THE LAWS OF REPUBLIC OF THE MARSHALL ISLANDS, THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE FOR AGREEMENTS MADE AND TO BE PERFORMED WHOLLY WITHIN THAT JURISDICTION; PROVIDED THAT TO THE EXTENT THAT THE LAWS OF REPUBLIC OF THE MARSHALL DO NOT PERMIT ANY PORTION OF THIS AGREEMENT OR THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, SUCH PORTION OF THIS AGREEMENT OR THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE REPUBLIC OF THE MARSHALL ISLANDS FOR AGREEMENTS MADE AND TO BE PERFORMED WHOLLY WITHIN THAT JURISDICTION.

12.14 Disputes.

(a) Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof (including the determination of the scope or applicability of this agreement to arbitrate) shall be determined by arbitration in New York County in the State of New York or any other mutually agreeable location, before a single arbitrator. The arbitrator shall be selected by agreement of the parties. If the parties are unable to agree on an arbitrator within 15 days after the demand for arbitration is made, JAMS shall designate the arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The Federal Arbitration Act shall govern the interpretation and enforcement of such arbitration proceeding. The arbitrator shall apply the Law of the State of Delaware and the Republic of the Marshall Islands, as the case may be, in accordance with Section 12.13.

(b) The parties agree that arbitration as provided in this Section 12.14 shall be the exclusive and binding method for resolving any such dispute and will be used instead of any court action, which is hereby expressly waived, except for any action to compel arbitration or obtain judgment on an arbitration award pursuant to this Section 12.14.

(c) The parties agree that they will attempt, and they intend that they and the arbitrator should use their best efforts in that attempt, to conclude the arbitration proceeding and have a final decision from the arbitrator within 150 days from the date of selection of the arbitrator; *provided*, *however*, that the arbitrator shall be entitled to extend such 150-day period one or more times to the extent the arbitrator deems it

necessary to adjudicate the claim and the parties shall have the right to extend such 150-day period by an agreement set forth in writing. The arbitrator shall promptly deliver a decision with respect to the dispute to each of the parties, who shall promptly act in accordance therewith. It is specifically understood and agreed that any party may obtain judgment on any award rendered pursuant to the arbitration provisions of this Section 12.14 by bringing suit in any court having jurisdiction. The parties agree that the arbitrator shall have authority to grant injunctive or other forms of equitable relief (including, without limitation, a temporary restraining order or preliminary injunction) to any party (i) to preserve such party's rights pending a final resolution on the merits or (ii) that prevails in any such arbitration.

(d) Each party shall initially be responsible for its own attorneys' fees; provided, however, that the arbitrator shall have discretion to award reasonable attorneys' fees and reasonable travel expenses (excluding meals) to the prevailing party, which fees may be set by the arbitrator of such action or may be enforced in a separate action brought before an arbitrator for that purpose in accordance with this Section 12.14, and which fees shall be in addition to any other relief that may be awarded.

(e) Each party to this Agreement shall maintain strict confidentiality with respect to all aspects of any arbitration commenced pursuant to this Agreement and shall not disclose the fact, conduct or outcome of the arbitration to any non-parties or non-participants, except disclosures (i) to consulting and testifying experts who agree to maintain confidentiality in accordance with this Section 12.14(e), (ii) to the extent required by applicable law or (iii) to the extent necessary to issue subpoenas or recognize, confirm or enforce any award or decision in the arbitration, without the prior written consent of all parties to the arbitration.

(f) Each of the parties irrevocably agrees that (i) any dispute, claim or controversy arising out of or relating to this Agreement that may not be arbitrated pursuant to the laws of the Republic of the Marshall Islands or (ii) any legal action or proceeding to compel arbitration or enforce any arbitral award granted pursuant to this Section 12.14 may be brought in the State or Federal courts located in New York County in the State of New York. Each of the parties hereby irrevocably (A) accepts the jurisdiction of the foregoing courts for the purposes set forth in the foregoing sentence, (B) agrees that a final judgment in any such legal action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner to the extent provided by law, (C) waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any such legal action or proceeding brought in such court and any claim that any such legal action or proceeding has been brought in an inconvenient forum, and (D) consents to service of process in the manner provided for notices in Section 12.2 (*provided*, that, nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by law). EACH PARTY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT.

12.15 Equitable Relief. Each Member hereby agrees and acknowledges that any breach by a Member of any of the provisions of this Agreement may irreparably injure the Company and its Members and that money damages will not provide an adequate remedy for such injury. Accordingly, in the event of a breach or threatened breach, the Company will have the right, but not the obligation, to seek equitable relief, including a temporary restraining order and/or preliminary injunction to preserve its rights pending a final resolution on the merits, by arbitration in accordance with Section 12.14. The Company will not be required to post any bond in order to obtain any such equitable relief. The Company's rights under this Section 12.15 shall be in addition to, and not in lieu of, any other rights and remedies available under this Agreement.

12.16 Waiver of Partition. Except as may otherwise be provided by law in connection with the dissolution, winding up and liquidation of the Company, each Member hereby irrevocably waives any and all rights that such Member may have to maintain an action for partition of any of the Member's property.

12.17 Survival of Certain Provisions. The obligations of each Member pursuant to Article V and Section 12.3 shall survive the termination or expiration of this Agreement and the dissolution, winding up and termination of the Company.

12.18 Entire Agreement. This Agreement, together with the Contribution Agreement, the other Transaction Documents and the instruments and herein and therein referenced constitute the entire agreement among the Members with respect to the subject matter hereof and supersede any prior agreement or understanding among them with respect to such subject matter (including the term sheet dated February 25, 2013), all of which are hereby terminated and shall cease to have effect in all respects, and there are no collateral or supplemental agreements relating to this Agreement other than those (if any) executed contemporaneously with this Agreement.

12.19 Management Agreement Rates. Unless unanimously approved by the Board, the initial daily fee rates specified in any Management Agreements for any Vessel acquired by the Company (other than the Contributed Vessels) shall not exceed $550 per day, subject to subsequent annual increases under the terms of such Management Agreement of 2% per annum; provided, however that the initial fee rate for Mathraki will be $883 per day for the period prior to December 31, 2013 and $550 per day thereafter, subject to annual increases under the terms of the applicable Management Agreement of 2% per annum.

12.20 No Third Party Beneficiaries; Creditors. The provisions of this Agreement are intended solely to benefit the Members and, to the fullest extent permitted by applicable law, shall not be construed as conferring any benefit upon any creditor of the Company or any other third party (and no such creditor or third party shall be a third party beneficiary of this Agreement), and no Member shall have any duty or obligation to any creditor of the Company to make any contribution to the Company or to cause the Company to request any contribution from any Member.

12.21 Compliance with Anti-Money Laundering Requirements. Notwithstanding any other provision of this Agreement, the Board shall be authorized without the consent of any

Person, including any other Member, to take such action as it determines in its sole discretion to be necessary or advisable to comply with any anti-money laundering or anti-terrorist laws, rules, regulations, directives or special measures. Each Member agrees to provide the Company at any time with such information as the Board determines to be necessary or appropriate to comply with the anti-money laundering laws and regulations of any applicable jurisdiction, or to respond to requests for information concerning the identity of a Member from any governmental authority, self-regulatory organization or financial institution in connection with its anti-money laundering compliance procedures, or to update such information.

12.22 Authority. Each Member hereby represents and warrants as regards to itself that:

(a) it is duly incorporated and in existence and has full power and authority to enter into and perform its obligations under this Agreement;

(b) the entry into and performance of this Agreement by it has been duly authorized by all the necessary corporate or entity actions on its part;

(c) its obligations under this Agreement are legal, binding and enforceable against such Member in accordance with the terms hereof, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting the enforcement of creditors' rights generally and general principles of equity;

(d) the entry into and performance of this Agreement does not and will not violate any provision of its constitutional documents;

(e) to the best of its knowledge, the entry into and performance of this Agreement does not and will not violate in any respect any law or regulation or any agreement to which it is a party; and

(f) all material consents, licenses, approvals and authorizations required by it in connection with the entry into this Agreement and the transactions contemplated by this Agreement have been obtained and are in full force and effect.

12.23 Legal Counsel. Each of the Company and the Members hereby acknowledge and agree that (i) Akin Gump Strauss Hauer & Feld LLP has acted as legal counsel solely for BX, Blackstone Family and BTO SMD with respect to the negotiation and consummation of this Agreement and the transactions contemplated by this Agreement, (ii) other than BX, Blackstone Family and BTO SMD and each of their respective successors and assigns, it has not relied on Akin Gump Strauss Hauer & Feld for any legal advice or counsel with respect to the negotiations and consummation of this Agreement and the transactions contemplated hereby, and (iii) other than BX, Blackstone Family and BTO SMD and each of their respective successors and assigns, it has been advised to seek the advice of independent legal counsel with respect to the negotiation and consummation of this Agreement and the transactions contemplated by this Agreement.

[***Signature Pages Follow***]

The undersigned have duly executed this Agreement as of the day and year first above written.

COMPANY:

ELETSON GAS LLC

By: _____

Name: V.E. Restis

Title: President, Director

PREFERRED MEMBER:

BTO ELETSON HOLDINGS L.P.

By: BTO Eletson Manager L.L.C.,
its General Partner

By: _____
Name: Christoper J. James
Title: Authorized Signatory

PREFERRED MEMBER:

BLACKSTONE FAMILY TACTICAL OPPORTUNITIES INVESTMENT PARTNERSHIP (CAYMAN) ESC L.P.

By: BTO GP L.L.C.,
its General Partner

By: _____
Name: Christopher J. James
Title: Authorized Signatory

PREFERRED MEMBER:

BLACKSTONE FAMILY TACTICAL OPPORTUNITIES INVESTMENT PARTNERSHIP (CAYMAN) SMD L.P.

By: BTO GP L.L.C.,
its General Partner

By: _____
Name: Christopher J. James
Title: Authorized Signatory

COMMON MEMBER:

ELETSON HOLDINGS INC.

By: _____
Name: V.K. KRITSILOFF
Title: VICE PRESIDENT, DIRECTOR

SPECIAL MEMBER:

ELETSON CORPORATION

By: _____
Name:
Title:

SCHEDULE I

SHIPCOS

1. Anafi Special Maritime Enterprise
2. Nisyros Special Maritime Enterprise
3. Symi II Special Maritime Enterprise
4. Telendos II Special Maritime Enterprise
5. Tilos Special Maritime Enterprise

SCHEDULE II

REGISTER
(as of Effective Date)

Member	Address for Notices	Class A Preferred Units	Class B-1 Preferred Units	Class B-2 Preferred Units	Common Units	Special Member Unit	Percentage Interest[1]	Capital Contributions
Eletson Holdings Inc.	118, Kolokotroni Street GR 18535 Piraeus, Greece	--	--	--	13,000,000	--	59.60% of all Units	$130,000,000
BTO Eletson Holdings L.P.	c/o Blackstone Tactical Opportunities 345 Park Avenue, New York, New York 10154	8,580,000	83,570	59,400	--	--	39.99% of all Units	$129,690,000
Blackstone Family Tactical Opportunities Investment Partnership (Cayman) ESC L.P.	c/o Blackstone Tactical Opportunities 345 Park Avenue, New York, New York 10154	39,222	382	272	--	--	0.18% of all Units	$592,861
Blackstone Family Tactical Opportunities	c/o Blackstone Tactical Opportunities	47,444	462	328	--	--	0.22% of	$717,139

[1] For purposes of calculating Percentage Interest, excludes the Special Member Unit.

Member	**Address for Notices**	**Class A Preferred Units**	**Class B-1 Preferred Units**	**Class B-2 Preferred Units**	**Common Units**	**Special Member Unit**	**Percentage Interest**[1]	**Capital Contributions**
Investment Partnership (Cayman) SMD L.P.	345 Park Avenue, New York, New York 10154						all Units	
Eletson Corporation	c/o Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro Marshall Islands MH 96960	--	--	--	--	1	--	$0

SCHEDULE III

MANAGEMENT AGREEMENTS

1. The ship management agreement dated as of May 24, 2018 between Eletson Gas LLC, as disponent owner, and the Manager in respect of the technical management of the medium gas carrier "Anafi";

2. The ship management agreement dated as of August 1, 2018 between Eletson Gas LLC, as disponent owner, and the Manager in respect of the technical management of the medium gas carrier "Nisyros";

3. The ship management agreement dated as of October 17, 2013 between Telendos II Special Maritime Enterprise, as owner, and the Manager in respect of the technical management of the medium gas carrier "Telendos";

4. The ship management agreement dated as of May 24, 2018 between Eletson Gas LLC, as disponent owner, and the Manager in respect of the technical management of the medium gas carrier "Tilos";

5. The ship management agreement dated as of October 17, 2013 between Symi II Special Maritime Enterprise, as owner, and the Manager in respect of the technical management of the medium gas carrier "Symi";

6. The ship management agreement dated as of October 17, 2013 between Mathraki Special Maritime Enterprise, as owner, and the Manager in respect of the technical management of the medium gas carrier "Mathraki";

7. The Ship Management Agreement, dated as of July 29, 2015, between Othoni Special Maritime Enterprise, as owner, and the Manager in respect of the technical management of the medium gas carrier "Othoni";

8. Ship Management Agreement, dated as of September 29, 2015, between Astipalea Special Maritime Enterprise, as owner, and the Manager in respect of the technical management of the medium gas carrier "Astipalea";

9. The Ship Management Agreement, dated as of November 24, 2015, between Paros Special Maritime Enterprise, as owner, and the Manager in respect of the technical management of the medium gas carrier "Paros";

10. The Ship Management Agreement, dated as of January 21, 2016, between Kithnos Special Maritime Enterprise, as owner, and the Manager in respect of the technical management of the medium gas carrier "Kithnos";

11. The Ship Management Agreement, dated as of March 31, 2016, between Dilos II Special Maritime Enterprise, as owner, and the Manager in respect of the technical management of the medium gas carrier "Dilos";

12. The Ship Management Agreement, dated as of July 26, 2018, between Kithira Gas Shipping Company, as disponent owner, and the Manager in respect of the technical management of the medium gas carrier "Kithira";

13. The Ship Management Agreement, dated as of June 28, 2018, between Antikithira Gas Shipping Company, as disponent owner, and the Manager in respect of the technical management of the medium gas carrier "Antikithira";

14. The Ship Management Agreement, dated as of June 28, 2018, between Ithaki Gas Shipping Company, as disponent owner, and the Manager in respect of the technical management of the medium gas carrier "Ithacki"; and

15. The Ship Management Agreement, dated as of May 31, 2018, between Kalolimnos Gas Shipping Company, as disponent owner, and the Manager in respect of the technical management of the medium gas carrier "Kalolimnos".

SCHEDULE IV

COMPLIANCE COVENANTS

The Company covenants as follows:

(1) Each Group Company shall, and the Company shall use its best efforts to ensure that each Group Company's Representatives, comply with all Applicable Laws to which such Group Company is subject in the performance of functions or obligations under this Agreement and in the course of dealing with or on the behalf of any Group Company.

(2) Each Group Company shall take all actions necessary to cause such Group Company to comply with Applicable Laws with respect to the conduct of Third Party Representatives on behalf of such Group Company.

(3)

(a) No Group Company shall, and the Company shall use its best efforts to ensure that no Group Company's Representatives, make or promise to make any payment or transfer anything of value, directly or indirectly, to any person by any means if such payment or transfer would violate the laws of the country in which it is made or the anti-bribery laws of Greece, Liberia, the Marshall Islands, the United States or any other country to which such Group Company is subject, in each case, in connection with the performance of functions or obligations under this Agreement.

(b) No Group Company shall, and the Company shall use its best efforts to ensure that no Group Company's Representatives, make any payments or transfers of anything of value in connection with the performance of functions or obligations under this Agreement with the intent of inducing or causing a prohibited act of bribery or other unlawful means of obtaining or retaining business.

(c) The Company shall not allow any Vessel to: (i) be chartered to a Prohibited Person; (ii) make voyages to or from any Prohibited Country; or (iii) carry cargo from or knowingly carry cargo to or knowingly destined to a Prohibited Country. Notwithstanding the foregoing the Company may permit the use of its Vessels to carry cargoes to a Prohibited Country provided: (A) such voyage and cargo are authorized pursuant to a valid export license issued by the United States Department of Commerce's Bureau of Industry and Security (a "BIS License") covering such voyages and conduct (if applicable) and/or (B) such trade or business transaction is permitted under a general or specific license issued by the United States Department of Treasury's Office of Foreign Assets Control (an "OFAC License").

(4) In connection with and for any Vessel, no Group Company shall, and the Company shall use its best efforts to ensure that no Group Company's Representatives, knowingly hire

any crewmembers or knowingly enter into any contract under which any Group Company would engage in a transaction involving an entity or person that is prohibited or otherwise subject to restrictions under sanctions laws of the European Union, the United Nations or the United States, including, without limitation, laws administered by U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), the U.S. Department of State or equivalent agencies of the European Union or other relevant jurisdictions.

(5) The Company shall use best efforts to ensure that each Group Company maintains appropriate procedures necessary to safeguard and comply with the foregoing obligations. Upon the reasonable request of any Member, the Company will confirm in writing that the Group Companies have complied, to the best of the Company's knowledge, with the covenants set forth in this Schedule IV and will provide any information reasonably requested by such Member in support of and to evidence such compliance.

(6) The Company shall establish, for itself and each other Group Company, compliance policies and procedures consistent with those as described in Exhibit A within the time periods described therein.

EXHIBIT A

INTERNATIONAL TRADE COMPLIANCE POLICIES AND PROCEDURES

The Company has adopted, and following the Effective Date, will continue to implement and maintain, for itself and each other Group Company (each Group Company shall be referred to herein as a "Subject Company" and collectively, as the "Subject Companies") a compliance program that is designed to ensure compliance with the international trade laws (including anti-bribery, export control, customs, anti-boycott and sanctions laws).

The compliance program will encompass the principles set forth below. Within six (6) months of the Initial Closing Date, the Company will develop and implement, for itself and each other Subject Company, appropriate written policies and procedures that implement these principles, provided that such Subject Company shall engage outside trade counsel (as described below) to assist in preparing the compliance policies and procedures.

Within six (6) months of the Initial Closing Date, the Company will undertake and train key employees of the Company and each other Subject Company in the details of such policies and procedures, and shall provide training on an ongoing basis throughout and beyond this period. The Company will review the efficacy of such policies and procedures on a periodic basis.

The Company shall establish international trade compliance policies and procedures, for itself and each other Subject Company, with the assistance of independent outside counsel with established expertise in international trade laws. The Company shall also appoint a qualified compliance officer to oversee the implementation of the compliance policies and procedures by each such Subject Company.

Compliance Program Principles

The compliance program developed by the Company, for itself and each other Subject Company, will include the following elements:

- *Tone from the Top* -- the compliance program will manifest senior management's commitment to compliance and vest responsibility for the compliance program in a senior officer, who will assign, as necessary, responsibility for implementation to other officials in each Subject Company.

- *Risk Assessment* -- the compliance program will be based on an assessment of the compliance risks facing the Subject Companies.

- *Written policies* -- the compliance program will be set out in writing and available to each Subject Company's employees.

- *Internal Controls* -- in addition to policies, the compliance program will contain targeted internal controls addressing high risk activities.

- *Training* -- the Company will adopt a risk-based approach to training employees on the policies and procedures in the compliance program.

- *Monitoring and audit* -- the Company will monitor the efficacy of the compliance program. Compliance with the policies and procedures will be mandatory and subject to audit at reasonable intervals consistent with the risk profile of the Subject Companies.

- *Remedial and Disciplinary Mechanisms* -- the compliance program will include provisions to take appropriate remedial and disciplinary measures, at each Subject Company's sole discretion, as necessary to uphold standards and procedures of the compliance program.

Anti-Bribery Principles

The compliance program will include appropriate policies and procedures addressing, at a minimum, the following areas:

Bribery of Public Officials: The policies will provide that employees may not, directly or indirectly, corruptly offer, give, or authorize the offering or giving of a financial or other advantage or anything else of value to a Government Official to: (i) induce the Government Official to violate a lawful duty; (ii) influence an official act or decision of the Government Official in order to obtain or retain business or secure an improper advantage for such Subject Company; or (iii) induce the Government Official to influence or affect an act or decision of a Government Entity, political party, or Public International Organization in order to obtain or retain business or secure an improper advantage for such Subject Company.[2]

Commercial Bribery: The policies will include safeguards to prevent commercial bribery.

Gifts, Meals, Entertainment, Travel, and Accommodation: The policies will provide standards for the reasonable provision of gifts, meals, entertainment, travel, or accommodation to counterparties or Government Officials, provided that doing so would not violate applicable anti-bribery laws.

Political and Charitable Contributions: The policies will provide that employees may make political or charitable contributions, provided that doing so would not violate applicable anti-bribery laws.

[2] "Government Official" means any official or employee of a Government Entity; any political party or official thereof; any official or employee of a public international organization; or any candidate for public office.

"Government Entity" means any government or its subdivision; any independent government agency; or any state-owned or state-controlled business.

"Public International Organizations" means any intergovernmental organization with an international membership, scope or presence. These are organizations that are made up primarily of sovereign states or members. Notable examples include the United Nations, World Trade Organization and the European Union.

Third Party Representatives: The compliance program will include reasonable and practical risk-based due diligence controls that are designed to detect any "red flags" that call into question the integrity of such Third Party Representatives; to the extent reasonable and practical based on the risk, each Subject Company will use best efforts to incorporate in its written contracts with its Third Party Representatives appropriate anti-bribery provisions.

Books and Records: The Company's policies will require that the Company and each other Subject Company maintain books and records that accurately and fairly reflect the transactions of each such Subject Company.

Other International Trade Law Principles

Each Subject Company will conduct its business in compliance with international trade laws applicable to its operations, including:

- Licensing, export clearance and other requirements applicable to cross-border transfers of products and technologies;
- Prohibitions and restrictions on exports to designated parties that may not receive some or all products, technology and software from the United States or other jurisdictions;
- Prohibitions and restrictions on exports to, and business and financial dealings with, certain individuals, countries, governments and other entities that are subject to sanctions under applicable Export Control and Economic Sanctions Laws[3]; and
- To the extent applicable, reporting requirements, prohibitions and tax liabilities that may be incurred in furthering or supporting international economic boycotts in which the United States does not participate, including the Arab boycott of Israel.

[3] "Export Control and Economic Sanctions Laws" shall mean laws, regulations, and orders imposing trade sanctions on countries, individuals or entities and/or regulating the export, re-export, transfer, disclosure or provision of commodities, software, technology or services including, without limitation, (i) U.S. restrictions pursuant to the Office of Foreign Assets Control regulations, 30 C.F.R. Parts 500-599, the Iran Sanctions Act of 1996, (Public Law 104-172, 50 U.S.C. 1701 note, as amended most recently by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195)), the Export Administration Regulations (EAR), 15 C.F.R. parts 730-774, the International Traffic in Arms Regulations (ITAR), 22 C.F.R. parts 120-130; (ii) EU and EU Member State export controls administered pursuant to Council Regulation (EC) 428/2009, economic and financial sanctions or restrictive measures imposed pursuant to EC Regulations, and similar national export control and sanctions measures of member states; and (iii) similar export control and sanctions laws.

SCHEDULE V

APPROVED VESSEL LETTER OF INTENT

1. Letter of Intent, dated July 26, 2013, for the Shipbuilding of 12,000 CBM Class LEG / LPG/ VCM Carriers between Eletson Gas LLC (as Buyer) and Hyundai Mipo Dockyard Co., Ltd. (as Builder).

2. Letter of Intent, dated July 26, 2013, for Three (3) Firm, Two Option Units of 22,000 CBM LEG Carriers, between Eletson Gas LLC and Nantong Sinopacific Offshore & Engineering Co., Ltd., as amended by that Amendment of Letter of Intent, dated August 20, 2013.

SCHEDULE VI

FUNDAMENTAL ACTIONS[4]

(a) Acquisitions and Dispositions:

(ii) directly or indirectly acquire or commit to acquire (i) vessels, including entry into any newbuild construction contract or purchase agreement, or (ii) assets having a value of greater than $1,000,000 (in any transaction or series of related transactions) which are not contemplated by an Approved Budget;

(iii) directly or indirectly dispose of or commit to dispose of (i) vessels including entry into any purchase and sale agreement, or (ii) assets having a value of greater than $1,000,000 (in any transaction or series of related transactions) which are not contemplated by an Approved Budget;

(b) increase or decrease the number of Directors serving on the Board, or modify the method of selecting Directors;

(c) approve an Approved Budget as contemplated by Section 3.5;

(d) incur or commit to incur any expense for any line item of expenditure in an Approved Budget to the extent such expense is (i) in excess of the lesser of (A) 110% of such major line item amount and (B) the amount set forth in such major line item plus $400,000 or (ii) in excess of $400,000 and not contained in an Approved Budget.

(e) issue Equity Interests in any Group Company;

(f) except as contemplated by an Approved Budget (1) issue debt securities, or (2) incur indebtedness, enter into any capital lease or provide any guarantee of the indebtedness of any other Person in connection with a financing other than Permitted Indebtedness;

(g) create, make, grant or suffer to exist any security interest, pledge, hypothecation, encumbrance or Lien on any property or asset of any Group Company, including, without limitation, the Vessels other than Permitted Liens;

(h) other than the execution and delivery of the Management Agreements by the Shipcos and the Manager on the Second Restatement Effective Date, enter into, or extend, amend, modify, renew or terminate any agreement or transaction, or waive performance under any such agreement, between a Group Company, on the one hand, and any member of the Group Company's management team, any Member, such Member's Affiliates or any other related party, on the other hand;

[4] Applicable other than during the Class B-2 Period.

(i) approve any distribution by the Company that is not consistent with Section 8.1;

(j) directly or indirectly redeem, purchase or otherwise acquire or make any payment or modify or amend the terms of with respect to any Units or the Membership Interests represented thereby, except as expressly provided by this Agreement and in accordance with the terms hereof;

(k) enter into a new line of business not within the purposes of the Company set forth in Section 1.4;

(l) terminate or commence and direct any claim, litigation, arbitration or other dispute resolution involving the Company or its Subsidiaries unless such claim, litigation, arbitration or other dispute resolution involves less than $100,000 and is in the ordinary course of business;

(m) commence any proceedings involving the voluntary liquidation, dissolution or winding up of the Company;

(n) except as permitted pursuant to Sections 10.2, 10.6 or 10.7, approve the sale of any Group Company or sale of all or substantially all of the assets of any Group Company, including in any initial public offering or the Transfer by a Member of any Equity Interest in the Company to any Person that is not a Permitted Transferee;

(o) declare any Vessel an actual or constructive loss and approve a settlement in excess of $500,000 of any insurance claim in respect of any Vessel;

(p) approve the amendment, modification, termination, waiver or repeal of any provision of any Transaction Document, or provide any approval, consent to be provided to any Person on behalf of the Company or its Subsidiaries under the Transaction Documents, including without limitation, exercising any right of the Company or a Subsidiary to remove a manager under a Management Agreement;

(q) make any capital call pursuant to Section 1.7(d);

(r) form any new Subsidiary of the Company;

(s) amend, modify or waive any provision of any charter, articles, organizational or other governing document of the Company's Subsidiaries;

(t) other than in accordance with the terms of the Management Agreements, enter into any technical or commercial management agreement, any crewing arrangement or any other material vessel or maritime asset related agreement or any amendment thereto;

(u) employ or remove any executive officer or other member of senior management, including any officer, employee or consultant receiving in excess of $300,000 per annum in compensation, or authorizing, amend the compensation arrangement for any of the

foregoing or institute, amend or alter any employee compensation plan, employee bonus plan or other similar arrangement;

(v) enter into, amend or waive any term in an agreement between the Company and any Officer or member of senior management;

(w) appoint or dismiss the Company's independent auditors or outside legal counsel;

(x) select or modify the method, principles, practices, procedures and policies of accounting or tax, or the Fiscal Year of the Company;

(y) take or make any action, commitment, agreement which, in the reasonable good faith judgment of the Officer taking or making the same, at the time of determination, should reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, results of operations, prospects, condition (financial or otherwise) or assets of the Group Companies taken as a whole; or

(z) enter into any agreement or commitment to effectuate any of the foregoing.

SCHEDULE VII

FUNDAMENTAL ACTIONS[5]

(a) increase or decrease the number of Directors serving on the Board, or modify the method of selecting Directors;

(b) other than the execution and delivery of the Management Agreements by the Shipcos and the Manager on the Initial Closing Date, enter into, or extend, amend, modify, renew or terminate any agreement or transaction, or waive performance under any such agreement, between a Group Company, on the one hand, and any member of the Group Company's management team, any Member, such Member's Affiliates or any other related party, on the other hand;

(c) approve any distribution by the Company that is not consistent with Section 8.1;

(d) directly or indirectly redeem, purchase or otherwise acquire or make any payment or modify or amend the terms of with respect to any Units or the Membership Interests represented thereby, except as expressly provided by this Agreement and in accordance with the terms hereof;

(e) enter into a new line of business not within the purposes of the Company set forth in Section 1.4;

(f) commence any proceedings involving the voluntary liquidation, dissolution or winding up of the Company that is not entered into in connection with a restructuring or insolvency proceeding;

(g) declare any Vessel an actual or constructive loss and approve a settlement in excess of $500,000 of any insurance claim in respect of any Vessel;

(h) approve the amendment, modification, termination, waiver or repeal of any provision of any Transaction Document (other than this Agreement), or provide any approval, consent to be provided to any Person on behalf of the Company or its Subsidiaries under the Transaction Documents (other than this Agreement), including without limitation, exercising any right of the Company or a Subsidiary to remove a manager under a Management Agreement;

(i) make any capital call that requires Eletson to make an additional Capital Contribution;

(j) amend or modify any provision of any charter, articles, organizational or other governing document of the Company's Subsidiaries that would have the effect of (i) creating any additional requirement of Eletson to make Capital Contributions to the Company, (ii) modifying any voting threshold or approval right held by Eletson, (iii) materially and adversely change the

[5] Applicable during the Class B-2 Period.

express rights of Eletson set forth therein, other than as a result of dilution due to the issuance of additional Equity Interests;

(k) other than in accordance with the terms of the Management Agreements, enter into any technical or commercial management agreement, any crewing arrangement or any other material vessel or maritime asset related agreement or any amendment thereto;

(l) employ or remove any executive officer or other member of senior management, including any officer, employee or consultant receiving in excess of $300,000 per annum in compensation, or authorizing, amend the compensation arrangement for any of the foregoing or institute, amend or alter any employee compensation plan, employee bonus plan or other similar arrangement;

(m) enter into, amend or waive any term in an agreement between the Company and any Officer or member of senior management;

(n) appoint or dismiss the Company's independent auditors or outside legal counsel;

(o) select or modify the method, principles, practices, procedures and policies of accounting or tax, or the Fiscal Year of the Company;

(p) enter into any agreement or commitment to effectuate any of the foregoing.

EXHIBIT G

AMENDMENT NO. 1 TO THE THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF ELETSON GAS, LLC

THIS AMENDMENT NO. 1 TO THE THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF ELETSON GAS, LLC (this "***Amendment***"), dated as of April 16, 2020, is by and among Eletson Gas, LLC (the "***Company***"), BTO Eletson Holdings L.P. ("***BX***"), Blackstone Family Tactical Opportunities Investment Partnership (Cayman) ESC L.P. ("***Blackstone Family***"), Blackstone Family Tactical Opportunities Investment Partnership (Cayman) SMD L.P. ("***BTO SMD***" and, together with BX and Blackstone Family, the "***Blackstone Investors***") and Eletson Holdings Inc. ("***Eletson***"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the LLC Agreement (as defined below).

A. Each of the Company, the Blackstone Investors, Eletson, and Eletson Corporation is party to that certain Third Amended and Restated Limited Liability Company Agreement of the Company, dated as of August 16, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the "***LLC Agreement***").

B. Pursuant to Section 3.2 and clause (i) of Schedule VII of the LLC Agreement, during the Class B-2 Period, the prior approval of at least four Directors is required for the Company to increase or decrease the number of Directors serving on the Board.

C. Pursuant to a written consent of the Board dated as of April 16, 2020, the Board voted on, and at least four Directors approved, a resolution to increase the size of the Board to seven Directors.

D. Pursuant to Section 12.1 of the LLC Agreement during the Class B-2 Period, the LLC Agreement may be amended or modified in a writing by the Company approved by a Majority-in-Interest of the Preferred Units.

E. As of the date hereof, the Blackstone Investors hold 100% of the Preferred Units.

F. The Blackstone Investors, Eletson and the Company desire to amend the LLC Agreement as set forth herein and in accordance with the requirements set forth in Section 12.1 of the LLC Agreement.

Now therefore, in consideration of the mutual covenants and agreements herein set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AMENDMENT

1. Amendments to LLC Agreement. The LLC Agreement is hereby amended as follows:

(a) The LLC Agreement is hereby amended to add a new definition of "Independent Director" as follows:

"Independent Director" has the meaning set forth in Section 3.3.

(b) Section 3.2 of the LLC Agreement is hereby amended and restated as follows:

3.2 Fundamental Actions. Except for actions authorized to be taken by Preferred Members pursuant to Section 3.6(c), the prior approval of at least four Directors (including at least one Eletson Director and at least one BX Director) shall be required in order for the Company to undertake, or permit or cause any Group Company to undertake, (i) during a Non-Class B-2 Period, any of the actions set forth on Schedule VI, and (ii) during the Class B-2 Period, any of the actions set forth on Schedule VII (each a "***Fundamental Action***").

(c) Section 3.3(a) of the LLC Agreement is hereby amended and restated as follows:

(a) Prior to the consummation of a Qualifying IPO, the Company shall have a board of managers (the "***Board***") comprised of a maximum of up to seven managers ("***Directors***") who shall be designated by the Members pursuant to the terms and provisions of this Section 3.3(a). During any period other than the Class B-2 Period, the Board shall be comprised of up to six Directors and (i) three Directors shall be designated and appointed by BX ("***BX Directors***"), (ii) two Directors shall be designated and appointed by Eletson ("***Eletson Directors***"), and (iii) one Director shall be designated and appointed by a majority of the remaining Directors ("***Independent Director***"). During the Class B-2 Period, the Board shall be comprised of up to seven Directors and BX shall have the right to designate and appoint up to four BX Directors. An individual does not need to be a Member, Officer or employee of the Company to serve as a Director. Each Director shall serve at the pleasure of the Member who was entitled to designate such Director ("***Designating Member***"); provided that the Designating Member with respect to the Independent Director shall be a majority of the remaining Directors (excluding such Independent Director). As of April 16, 2020, (1) the BX Directors shall be Jasvinder Khaira, Andrea Serra and Andrew Sagat, (2) the Eletson Directors shall be Vassilis E. Kertsikoff and Lascarina J. Karastamati, and (3) the Independent Director shall be Alexander Greene. Only the Designating Member who originally designated a Director may remove such Director, provided further, that in the event the number of Directors to be appointed by any Member is reduced pursuant to Section 3.3(b), the Designating Member shall promptly remove such Director(s). Notwithstanding the foregoing, a Designating Member shall remove as soon as practicable any Director that such Designating Member appointed if such Director is (a) convicted of a felony or other crime involving moral turpitude or other Disabling Conduct, (b) dies or (c) becomes unable to perform his/her duties hereunder on account of illness or other incapacity. Any Director may resign upon written notice to the Designating Member who designated such Director and to the Company. The resignation shall take effect upon receipt of such notice, or at such later time as shall be specified in such notice. Any vacancy occurring for any reason in the number of Directors

shall be filled by the Designating Member that originally designated the Director whose position has become vacant.

(d) Section 3.4(c) of the LLC Agreement is hereby amended and restated as follows:

> (c) Subject to Section 3.6, each Director present at any meeting shall be entitled to cast one vote on each matter that comes before the Board for a vote. Except as otherwise specifically set forth in this Agreement, every action or resolution done or made by the Board shall require only the majority vote of all of the Directors. Any action required or permitted to be taken by the Board may be taken (except as otherwise set forth in this Agreement) without a meeting, without prior notice and without a vote, if a consent or consents in writing shall be signed by (i) during a Non-Class B-2 Period, at least four (4) Directors (including at least one Eletson Director and one BX Director), and (ii) during the Class B-2 Period, at least three (3) Directors (including at least one BX Director).

2. No Other Amendment. Except as expressly provided herein, this Amendment shall not constitute an amendment, modification or waiver of any provision of the LLC Agreement, which shall continue and remain in full force and effect in accordance with its terms as amended hereby.

3. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same agreement, and the execution of a counterpart of the signature page to this Amendment shall be deemed the execution of a counterpart of this Amendment. The delivery of this Amendment may be made by facsimile or portable document format (pdf), and such signatures shall be treated as original signatures for all applicable purposes.

4. Applicable Law. TO THE FULLEST EXTENT PERMITTED UNDER THE LAWS OF REPUBLIC OF THE MARSHALL ISLANDS, THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE FOR AGREEMENTS MADE AND TO BE PERFORMED WHOLLY WITHIN THAT JURISDICTION; PROVIDED THAT TO THE EXTENT THAT THE LAWS OF REPUBLIC OF THE MARSHALL ISLANDS DO NOT PERMIT ANY PORTION OF THIS AMENDMENT OR THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER TO BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, SUCH PORTION OF THIS AMENDMENT OR THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE REPUBLIC OF THE MARSHALL ISLANDS FOR AGREEMENTS MADE AND TO BE PERFORMED WHOLLY WITHIN THAT JURISDICTION.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

The parties have caused this Amendment to be duly executed as of the day and year first above written.

COMPANY:

ELETSON GAS LLC

By: _____

Name: V.E. KERTSIKOFF

Title: PRESIDENT, DIRECTOR

PREFERRED MEMBERS:

BTO ELETSON HOLDINGS L.P.

By: BTO Eletson Manager L.L.C.,
its General Partner

By: _____
Name: Christopher J. James
Title: Authorized Person

BLACKSTONE FAMILY TACTICAL OPPORTUNITIES INVESTMENT PARTNERSHIP (CAYMAN) ESC L.P.

By: BTO GP L.L.C.,
its General Partner

By: _____
Name: Christopher J. James
Title: Authorized Person

BLACKSTONE FAMILY TACTICAL OPPORTUNITIES INVESTMENT PARTNERSHIP (CAYMAN) SMD L.P.

By: BTO GP L.L.C.,
its General Partner

By: _____
Name: Christopher J. James
Title: Authorized Person

COMMON MEMBER:

ELETSON HOLDINGS INC.

By: _____
Name: LASCARINA D. KARASTAMATI
Title: President / DIRECTOR

EXHIBIT H

STRICTLY PRIVATE AND CONFIDENTIAL

FROM:

1. Desimusco Trading Limited
2. Apargo Limited
3. Fentalon Limited
   (all of Ifigeneias 17, Strovolos 2007, Nicosia, Cyprus)

TO: Eletson Gas LLC
The Chairman/ President / Treasurer/ Director of Eletson Gas LLC, **Mr. Vassilis E. Kertsikoff**
The Secretary/ Director of Eletson Gas LLC, **Mrs. Laskarina I. Karastamati,**

Dated: 26 February 2024

Dear Sir/ Madam,

Re: Notice of Removal and Appointment of NewDirectors

Capitalised terms used but not defined in this letter shall have the meanings given to them in that certain Third Amended and Restated Limited Liability Company Agreement of Eletson Gas LLC, dated as of August 16, 2019, as amended from time to time (the "**LLC Agreement**").

Adam Spears, Joshua Fenttiman, Mark Lichtenstein and Eliyahu Hassett had been previously designated and appointed to serve as BX Directors of Eletson Gas LLC.

Notice is hereby given that Adam Spears, Joshua Fenttiman, Mark Lichtenstein and Eliyahu Hassett are removed from their respective capacities as Directors of Eletson Gas LLC.

Furthermore, notice is hereby given that the undersigned designate and appoint **Mrs. Eleni Chatzieleftheriadi, Mr. Konstantinos Kertsikoff, Mr. Adrianos Psomadakis-Karastamatis,** and **Mrs. Maria Biniou** as Directors of Eletson Gas LLC (collectively, the "**New Directors**"). The New Directors shall be deemed BX Directors for all purposes under the LLC Agreement.

Yours Sincerely,

Desimusco Trading Limited
By: Marios Lazarou
Title: Sole Director

Apargo Limited
By: Loucas Hadjiyiangou
Title: Sole Director

Fentalon Limited
By: Savvas Polydorou
Title: Sole Director

EXHIBIT I

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: Eletson Holdings Inc., *et al.*, Debtors.	**NOT FOR PUBLICATION** Chapter 11 Case No. 23-10322 (JPM) (Jointly Administered)

MEMORANDUM OPINION AND ORDER DENYING THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' MOTION TO MODIFY THE COURT'S PRIOR ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY

A P P E A R A N C E S:

REED SMITH LLP
Counsel for the Debtors
10 South Wacker Drive, 40th Floor
Chicago, IL 60606
By: Anne E. Pille, Esq.

REED SMITH LLP
Counsel for the Debtors
599 Lexington Avenue
New York, NY 10022
By: Louis M. Solomon, Esq.

DECHERT LLP
Counsel for the Official Committee of Unsecured Creditors
1095 Avenue of the Americas
New York, NY 10036
By: Stephen D. Zide, Esq.

PERKINS COIE LLP
Counsel for Wilmington Savings Fund Society, FSB
1155 Avenue of the Americas, 22nd Floor
New York, NY 10036
By: Tina N. Moss, Esq.

JOHN P. MASTANDO III
UNITED STATES BANKRUPTCY JUDGE

I. INTRODUCTION

Pending before the Court is the Official Committee of Unsecured Creditors' (the "**Committee**") *Motion to Modify the Court's Prior Order Granting Relief from the Automatic Stay* (the "**Motion**"). (Docket No. 239).[1] The Motion seeks modification of this Court's April 17, 2023 stipulation and order (the "**Stay Relief Order**") (Docket No. 48), which lifted the automatic stay to permit debtor Eletson Holdings Inc. and its subsidiary, non-debtor Eletson Corporation, to pursue an arbitration against Levona Holdings Ltd. ("**Levona**") to determine ownership of preferred shares (the "**Preferred Shares**") of a non-debtor entity, Eletson Gas, LLC ("**Eletson Gas**"). (Motion ¶¶ 1, 15).

In response to the Motion, Eletson Holdings Inc., Eletson Finance (US) LLC and Agathonissos Finance LLC (collectively, the "**Debtors**") filed the *Opposition of the Debtors to the "Motion of the Official Committee of Unsecured Creditors to Modify the Court's Prior Order Granting Relief from the Automatic Stay"* (the "**Objection**"). (Docket No. 286).

Thereafter, the Committee filed the *Reply of the Official Committee of Unsecured Creditors in Further Support of its Motion to Modify the Court's Prior Order Granting Relief from the Automatic Stay* (the "**Reply**"). (Docket No. 302).

The Court heard arguments of counsel at a hearing on December 4, 2023 (the "**December 4, 2023 Hearing**," and the transcript thereof (Docket No. 309), the "**December 4, 2023**

[1] References to "Docket No. __" are to filings entered on the docket in *In re Eletson Holdings Inc. et al.*, No. 23-10322. References to "Bankruptcy Rule __" are to the Federal Rules of Bankruptcy Procedure. References to "Local Rule __" are to the Local Bankruptcy Rules for the Southern District of New York. References to "FRCP __" are to the Federal Rules of Civil Procedure.

Transcript"). The Court has reviewed and considered the Motion, the Objection, the Reply, the arguments of counsel at the December 4, 2023 Hearing, and all relevant material on the record.

II. JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157(a) and (b)(1) and the Amended Standing Order of Reference dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (G).

III. BACKGROUND

On March 7, 2023, Pach Shemen, LLC, VR Global Partners, L.P., and Alpine Partners (BVI), L.P. (the "**Petitioning Creditors**") filed involuntary chapter 7 bankruptcy petitions against the Debtors under Section 303 of the Bankruptcy Code. (Docket No. 1.) Shortly thereafter, at a hearing on April 17, 2023, (the "**April 17, 2023 Hearing**," and the transcript thereof (Docket No. 63), the "**April 17, 2023 Transcript**") the parties stipulated to stay relief to permit debtor Eletson Holdings and its subsidiary, Eletson Corporation, to pursue an arbitration against Levona to determine the ownership of Preferred Shares in non-debtor Eletson Gas.[2] (Motion ¶¶ 1, 15; April 17, 2023 Hearing Transcript 14:1–21). On the same date, this Court entered the Stay Relief Order pursuant to the stipulation. (Docket No. 48).

Following entry of the Stay Relief Order, on July 27, 2023, Justice Ariel Belen (the "**Arbitrator**") entered an interim award[3] (the "**Arbitration Award**") in favor of the Debtors finding, in relevant part: (i) Eletson Gas had exercised its option to purchase the Preferred Shares, which shares were then transferred to certain non-debtor entities outside the Debtors' capital structure (the "**Cypriot Nominees**"); and (ii) Murchinson, Ltd. ("**Murchinson**"), Levona,

[2] The common shares of Eletson Gas are held by debtor Eletson Holdings. (December 4, 2023 Hearing Transcript 77:21–22.)
[3] The interim award was later made final on September 29, 2023. (*See* Objection Ex. A.)

and Pach Shemen, LLC (collectively, with Murchinson and Levona, the "**Murchinson Entities**") were jointly and severally liable to Eletson Gas and the Cypriot Nominees for $102 million in compensatory and punitive damages. (*Id.* at ¶ 5; Objection at ¶ 3). On August 18, 2023, Eletson Holdings and Eletson Corporation filed a petition (the "**Confirmation Proceedings**") in the United States District Court for the Southern District of New York (the "**District Court**") to confirm the Arbitration Award. (Motion at ¶ 30).

On September 25, 2023, this Court entered an order converting these cases to cases under chapter 11. (*Id.* at ¶ 31). Shortly thereafter, on October 20, 2023, the U.S. Trustee appointed the Committee pursuant to Section 1102(a) of the Bankruptcy Code. (Docket No. 233). The Committee is comprised of the following members: Aegean Baltic Bank S.A.; Gene B. Goldstein; and Wilmington Savings Fund Society, FSB, as Indenture Trustee. (*Id.*)

By way of the Motion, the Committee seeks an order modifying the Stay Relief Order to provide that, "until further order of this Court, (a) the Arbitration and related [C]onfirmation [P]roceedings are stayed; and (b) the Debtors shall not take any steps to transfer, or seek a ruling as to the transfer of, any assets of the Debtors or their subsidiaries, including Eletson Gas." (*Id.* at ¶ 37).

The Committee argues that this Court has inherent authority to modify the Stay Relief Order under Section 105(a) of the Bankruptcy Code. (Motion at ¶ 38). Moreover, the Committee asserts that under Federal Rule of Civil Procedure 60(b)(6) (made applicable to bankruptcy cases by Bankruptcy Rule 9024), on a "motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding for . . . any . . . reason that justifies relief." (*Id.* at ¶ 39 (citing Fed. R. Civ. P. 60(b)(6))).

In support of its position that this Court should exercise its authority pursuant to Section 105(a) and Bankruptcy Rule 60(b)(6) to modify the Stay Relief Order, the Committee asserts that such relief is necessary to preserve the status quo and avoid irreparable harm to the estates that would occur if the Arbitration Award is confirmed. (*Id.* at ¶¶ 41–47). The Committee is specifically troubled by the portion of the Arbitration Award that found that the Preferred Shares in Eletson Gas were transferred "to the Debtors' out-of-the-money shareholders and outside the reach of their creditors." (*Id.* at ¶¶ 42–43). In essence, the Committee argues that if such a transfer did occur, the Debtors' estates may have "valuable causes of action arising from that transfer, including claims to avoid the transfer as a fraudulent conveyance and claims against the individuals involved for, among other things, breach of fiduciary duty, corporate waste, and usurpation of corporate opportunity." (*Id.* at ¶ 42).

At the same time, the Committee argues that counsel for the Debtors—who also represent debtor Eletson Holdings and non-debtor Eletson Corporation in the Arbitration—advanced arguments in the Arbitration contrary to the Debtors' best interest in urging the Arbitrator to find that the Preferred Shares had been transferred to the Cypriot Nominees. (*Id.* at ¶ 43).

Finally, the Committee asserts that the Arbitration Award was obtained in violation of the Stay Relief Order because that order only modified the stay with respect to "claims currently pending in the Arbitration." (*Id.* at ¶ 46 (citing the Stay Relief Order)). According to the Committee, the Debtors violated the Stay Relief Order by claiming that the Preferred Shares belonged to the Cypriot Nominees and not the Debtors, which is a claim that the Committee asserts was not pending at the time that this Court entered the Stay Relief Order. (*Id.*).

In the Debtors' Objection, the Debtors assert the following primary arguments: (i) the Motion was filed by the Committee for an improper purpose, namely, to prevent the Murchinson

Entities from having to pay the damages assessed against them in the arbitration (Objection at ¶¶ 13–21); (ii) the Motion is procedurally improper because the relief sought by the Committee requires the commencement of an adversary proceeding (*Id.* at ¶¶ 22–26); (iii) the Motion contains factual misrepresentations (*Id.* at ¶¶ 27–38); (iv) the Arbitration Award provides substantial benefit to the Debtors (*Id.* at ¶¶ 39–41); and (v) efficient use of estate resources compels that the Stay Relief Order remain unmodified. (*Id.* at ¶¶ 42–44).

In the Committee's Reply, the Committee generally asserts that: (i) the Committee filed the Motion because the Debtors seek confirmation of the Arbitration Award, which would benefit their equity holders at the expense of their creditors (Reply at ¶¶ 8–10); (ii) the Motion is procedurally proper and does not require an adversary proceeding (*Id.* at ¶¶ 11–13); and (iii) the Motion was filed in good faith and for a proper purpose, namely to preserve estate assets and highlight the fact that the Debtors violated the Stay Relief Order by raising new arguments in the arbitration. (*Id.* at ¶¶ 14–30).

IV. LEGAL STANDARDS AND DISCUSSION

Requests for reimposition or reinstatement of the automatic stay require the filing of an adversary proceeding. *See In re Armenakis*, 406 B.R. 589, 597, n.9 (Bankr. S.D.N.Y. 2009) (noting that "reimposition of the stay under § 105(a) . . . [is] a 'proceeding to obtain an injunction or other equitable relief' under Rule 7001(7) and require[s] the filing of an adversary proceeding"); *see also In re Zahn Farms,* 206 B.R. 643, 645, n.1 (B.A.P. 2nd Cir. 1997) (noting that requests to reinstate the § 362(a) stay are "governed [] by FRBP 7001(7), and require[] an [a]dversary [p]roceeding"). Here, the Committee has not commenced an adversary proceeding.

However, some Courts have distinguished motions to reconsider filed pursuant to FRCP 60(b) from motions seeking to reimpose the automatic stay, and have found that such relief pursuant to FRCP 60(b) may be requested by motion. For example, in *In re Armenakis*, in ruling

on a motion to reconsider under Rule 60(b), the court noted that "the specific action taken by the [c]ourt vacated the [l]ift [s]tay [o]rder and reinstated the stay, restoring the parties to the status quo before the [l]ift [s]tay [o]rder was granted." *In re Armenakis*, 406 B.R. at 597, n.9. The court distinguished such action from "the reimposition of the stay under § 105(a), which would be a 'proceeding to obtain an injunction or other equitable relief' under Rule 7001(7) and require the filing of an adversary proceeding . . ." and noted that the Tenth Circuit permits such relief to be requested by motion. *Id.* (citing *In re Gledhill*, 76 F.3d 1070, 1079 (10th Cir.1996)).

Assuming, *arguendo*, that motions seeking to modify the automatic stay brought pursuant to FRCP 60(b) may be exempt from the general requirement of an adversary proceeding under Bankruptcy Rule 7001(7), the Court finds that the applicable standard to obtain relief under FRCP 60(b) has not been met.

FRCP 60(b), made applicable to bankruptcy cases by Bankruptcy Rule 9024, allows the Court to relieve a party from a final judgment for:

> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

In the Motion, the Committee moves under Rule 60(b)(6), which, as stated above, permits the Court to grant relief from an order for "any [] reason that justifies relief." (Motion at ¶ 39 (citing Fed. R. Civ. P. 60(b)(6))). Courts have held that FRCP 60(b)(6) "confers broad discretion on the trial court to grant relief when appropriate to accomplish justice." *United*

Airlines, Inc. v. Brien, 588 F.3d 158, 176 (2d Cir. 2009) (citing *Matarese v. LeFevre,* 801 F.2d 98, 106 (2d Cir.1986) (internal quotation marks omitted)). However, "[a]lthough courts have broad discretion in applying [] Rule 60(b)(6) . . . relief should not be granted unless [the] movant shows exceptional or extraordinary circumstances, . . . or extreme and undue hardship." *In re AL & LP Realty Co.*, 164 B.R. 231, 234 (Bankr. S.D.N.Y. 1994) (internal citations omitted); *see also House v. Sec'y of Health & Hum. Servs.*, 688 F.2d 7, 9 (2d Cir. 1982) (collecting cases).

As stated above, the Committee's principal argument that exceptional or extraordinary circumstances, or extreme and undue hardship exist here is that the Arbitration Award contains a finding that the Preferred Shares in Eletson Gas were transferred "to the Debtors' out-of-the-money shareholders and outside the reach of their creditors." (Motion at ¶ 43). The Committee asserts, accordingly, that confirmation of the Arbitration Award would be tantamount to dissipation of estate assets. (*Id.* at ¶¶ 42–43). The Committee also argues that counsel for the Debtors advanced arguments in the Arbitration contrary to the Debtors' best interest by urging the Arbitrator to find that the Preferred Shares had been transferred to the Cypriot Nominees. (*Id.* at ¶ 43). Finally, the Committee argues that the Arbitration Award was obtained in violation of the Stay Relief Order, which only modified the stay with respect to "claims currently pending in the Arbitration." (*Id.* at ¶ 46 (citing the Stay Relief Order)).

The Court is unpersuaded that exceptional or extraordinary circumstances, or extreme and undue hardship exist here. First, confirmation of the Arbitration Award would not impinge on any party's ability to attempt to assert causes of action, if warranted, in these proceedings relating to any finding or action in the Arbitration. Indeed, in the Motion, the Committee itself states that the Debtors' estates may have "valuable causes of action arising from that transfer [to the Cypriot Nominees], including claims to avoid the transfer as a fraudulent conveyance and

claims against the individuals involved for, among other things, breach of fiduciary duty, corporate waste, and usurpation of corporate opportunity." (*Id.* at ¶ 42).

The lack of exceptional or extraordinary circumstances, or extreme and undue hardship is further evidenced by the express terms of the Stay Relief Order, which provides:

> Any Arbitration Award, whether in favor of any Arbitration Party, shall be stayed pending further order of the Bankruptcy Court on a motion noticed following the issuance of the Arbitration Award. For avoidance of doubt, no Arbitration Party shall transfer, dispose of, transact in, hypothecate, encumber, impair or otherwise use any such Arbitration Award or any asset or property related thereto absent a further order of this Court.

(Stay Relief Order at ¶ 4).

Moreover, the Arbitration Award contains an award of approximately $102 million in compensatory and punitive damages against the Murchinson Entities, approximately half of which is payable to debtor Eletson Holdings' subsidiary, Eletson Gas. (*Id.* at ¶ 5; Objection at ¶ 3; December 4, 2023 Hearing Transcript 77:21–22).

Finally, the Committee's contention that the Arbitration Award was obtained in violation of the Stay Relief Order also does not constitute exceptional or extraordinary circumstances, or extreme and undue hardship. The Court notes that similar arguments were already raised and rejected by the Arbitrator. (Final Award at 30–32). Indeed, in the Arbitration, Levona filed a *Motion to Strike Claimants' New Allegations of the Transfer of the Preferred Shares to the Preferred Nominees, or in the Alternative, to Dismiss Claimants' Claims in Chief* (the "**Motion to Strike or Dismiss**") on the grounds that such claims were untimely raised. (*Id.* at 17, 30). Notwithstanding that it was "undisputed that Eletson raised th[e] contingent transfer to Cypriot nominees for the first time in its Rule 20(b) submission on May 5, 2023," the Arbitrator denied the Motion to Strike or Dismiss, finding that Eletson credibly explained why it did not initially raise the transfer to the Cypriot Nominees (because Eletson did not believe such information was

relevant until Levona claimed that the Preferred Shares were property of the Eletson Holdings estate in these bankruptcy proceedings), and also finding that the timing of such late disclosure was not prejudicial to Levona.[4] (*Id.* at 30–32).

Relatedly, Levona sought to stay the Confirmation Proceedings before the District Court three times: first, by filing a "statement of relatedness" seeking to establish that the Confirmation Proceedings and these bankruptcy proceedings are related (Objection at ¶ 4); second, by filing a Referral Motion (the "**Referral Motion**") seeking to refer the Confirmation Proceedings to this Court (*Id.* at ¶ 4); and third, by filing a Motion to Reconsider (the "**Motion to Reconsider**") the denial of the Referral Motion. (*Id.* at ¶ 7). All three attempts were denied by the District Court. (*Id.* at ¶¶ 4–7).

In denying the Referral Motion, the District Court noted that it "has original jurisdiction over the action . . . . [and] is the proper forum to decide whether to confirm or vacate the award." (*Id.* at ¶ 5 (citing the October 10, 2023, *Memorandum and Order* (J. Liman), attached to the Objection as Exhibit B)). In denying the Motion to Reconsider, the District Court further elaborated that "all that the bankruptcy court could do in this matter would be to prepare and submit proposed findings of fact and conclusions of law that would be reviewed de novo by [the District Court] . . . . The [District] Court assumes it has the authority to send this matter to the bankruptcy court and declines to exercise that authority." (*Id.* at ¶ 7 (citing the October 17, 2023, *Order* (J. Liman), attached to the Objection as Exhibit C)).

As Judge Liman noted in the Confirmation Proceedings, it is the District Court—not this Court—that has original jurisdiction over confirmation of the Arbitration Award. (Objection at ¶ 5). For this reason, the Court finds that these issues related to the timeliness of claims raised in

[4] The Arbitrator also found that Levona had an opportunity to seek additional discovery regarding the transfer and to cross-examine witnesses on the issue but did not do so. (*Id.* at 31–32).

the Arbitration should be addressed by the District Court in the Confirmation Proceedings. (December 4, 2023 Hearing Transcript 80:1–24).

Accordingly, the Court finds that the Committee has failed to demonstrate that exceptional or extraordinary circumstances, or extreme and undue hardship exist here to warrant relief under FRCP 60(b)(6). *See In re AL & LP Realty Co.*, 164 B.R. at 234; *see also House v. Sec'y of Health & Hum. Servs.*, 688 F.2d at 9.

The Committee also advanced Section 105(a) as an alternative basis for the Court to modify the Stay Relief Order, stating that this Court has inherent authority to do so. (Reply at ¶ 11). The Court, however, declines to exercise the inherent authority it may have under Section 105(a) to modify the Stay Relief Order for all the same reasons stated above.

Finally, for these same reasons, even if the Committee were to file an adversary proceeding seeking to reimpose the stay, such adversary proceeding appears unlikely to succeed. As noted above, seeking reimposition of the automatic stay is akin to seeking an injunction. *In re Zahn Farms*, 206 B.R. at 645 (noting that a "request to 'reinstate' the § 362(a) stay is, in fact, a request for an injunction and should meet the standards therefor"). In obtaining an injunction, the moving party must show, in relevant part, that it "will suffer irreparable harm in the absence of an injunction . . . ." *See Tom Doherty Assocs., Inc. v. Saban Ent., Inc.*, 60 F.3d 27, 33 (2d Cir. 1995). As stated above, if, as the Committee asserts, causes of action exist relating to findings made in the Arbitration, the Court is unaware of any impediment (as a result of the Stay Relief Order) to such causes of action being asserted in these proceedings by the appropriate party, at the appropriate time. Accordingly, confirmation of the Arbitration Award does not constitute irreparable harm to the estate.

V. CONCLUSION

For the foregoing reasons the Motion is DENIED.

It is SO ORDERED.

Dated: January 4, 2024
New York, New York

/S/ John P. Mastando III
HONORABLE JOHN P. MASTANDO III
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT J

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: Eletson Holdings Inc., *et al.*, Debtors.	**FOR PUBLICATION** Chapter 11 Case No. 23-10322 (JPM) (Jointly Administered)

MEMORANDUM OPINION AND ORDER DENYING: (I) MOTION IN LIMINE; (II) MOTION TO EXCLUDE; AND (III) MOTIONS TO APPOINT A CHAPTER 11 TRUSTEE

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JOHN P. MASTANDO III
UNITED STATES BANKRUPTCY JUDGE

I. INTRODUCTION

Section 1104(a) of the Bankruptcy Code provides that a Court shall appoint a Chapter 11 Trustee for cause, or when such appointment is in the best interest of creditors. *See* 11 U.S.C. § 1104(a). Though the standard under Section 1104(a) permits the Court to analyze a wide array of conduct in determining whether a Chapter 11 Trustee should be appointed, the appointment of a Chapter 11 Trustee is considered an extraordinary remedy and parties seeking such an appointment must prove by "'clear and convincing evidence' that the appointment of a trustee is warranted." *In re Bayou Grp., LLC*, 564 F.3d 541, 546 (2d Cir. 2009) (citing *In re Adelphia Commc'ns Corp.*, 336 B.R. 610, 655 (Bankr. S.D.N.Y.), *aff'd*, 342 B.R. 122 (S.D.N.Y. 2006)).

These cases began when certain petitioning creditors commenced involuntary bankruptcy proceedings against the Debtors. Though these cases have since been converted to voluntary Chapter 11 proceedings, the adversarial spirit inherent in an involuntary bankruptcy case remains, and has, most recently, resulted in the motions to appoint a Chapter 11 Trustee presently pending before the Court. While the Court understands many of the movants' concerns, the Court ultimately finds that the movants have not met the high burden necessary for such an extraordinary remedy.

Pending before the Court are three motions to appoint a Chapter 11 Trustee: (i) the Official Committee of Unsecured Creditors' (the "**Committee**") *Motion for an Order Appointing a Chapter 11 Trustee* (the "**Committee Motion**") (Docket No. 394)[1]; (ii) the Office of the

[1] References to "Docket No. __" are to filings entered on the docket in *In re Eletson Holdings Inc. et al.*, No. 23-10322. References to "Bankruptcy Rule __" are to the Federal Rules of Bankruptcy Procedure. References to "Local Rule __" are to the Local Bankruptcy Rules for the Southern District of New York. References to "FRCP __" are to the Federal Rules of Civil Procedure.

United States Trustee's (the "**UST**") *Motion to Appoint a Chapter 11 Trustee* (the "**UST Motion**") (Docket No. 424); and (iii) Pach Shemen LLC, VR Global Partners, L.P., Alpine Partners (BVI), L.P., Gene B. Goldstein, Gene B. Goldstein, In His Capacity as Trustee of the Gene B. Goldstein and Francine T. Goldstein Family Trust, Mark Millet, In His Capacity as Trustee of the Mark E. Millet Living Trust, Mark Millet, In His Capacity as Trustee of the Millet 2016 Irrevocable Trust, Robert Latter, Tracy Lee Gustafson, Jason Chamness, and Ron Pike's (collectively the "**Petitioning Creditors**," and collectively, with the Committee, the "**Creditors**") *Emergency Motion to Appoint a Trustee* (the "**PC Motion**," and together, with the Committee Motion and the UST Motion, the "**Trustee Motions**"). (Docket No. 468).

The Committee Motion is supported by the *Declaration of Michael Cordasco in Support of Motion of the Official Committee of Unsecured Creditors for an Order Appointing a Chapter 11 Trustee* (the "**Cordasco Declaration**"). (Docket No. 396).

The following joinders were filed to the Trustee Motions: (i) the Petitioning Creditors joined both the Committee Motion and the UST Motion (the "**PC Joinder**") (Docket No. 477); and (ii) Deutsche Bank Trust Company Americas in its Capacity as Indenture Trustee under the 2013 Notes Indenture ("**Deutsche Bank**"), Wilmington Savings Fund Society, FSB, as Trustee, ("**Wilmington**"), and Sunrise I NPL Finance ("**Sunrise**") joined the Committee Motion. (Docket Nos. 404, 420, and 476).

The PC Joinder is supported by the *Declaration of Jared C. Borriello in Support of Joinder of Motions for an Order Appointing Chapter 11 Trustee* (the "**Boriello Declaration**") (Docket No. 478).

In response to the Trustee Motions, Eletson Holdings Inc. ("**Eletson Holdings**"), Eletson Finance (US) LLC ("**Eletson Finance**") and Agathonissos Finance LLC ("**Agathonissos**

Finance," and collectively with Eletson Holdings and Eletson Finance, the "**Debtors**") filed an objection to the UST Motion (the "**Objection to the UST Motion**") (Docket No. 512) and an omnibus objection to the Committee Motion and the PC Motion (the "**Omnibus Objection**"). (Docket No. 513).

The Omnibus Objection is supported by the *Declaration of Louis M. Solomon in Support of Debtors' Omnibus Objection to (i) Motion of the Official Committee of Unsecured Creditors for an Order Appointing a Chapter 11 Trustee and Joinder of Petitioning Creditors and (ii) Petitioning Creditors' Emergency Motion to Appoint a Trustee* (the "**Solomon Declaration**") (Docket No. 517).

Lassia Investment Company, Glafkos Trust Company, and Family Unity Trust Company, the majority shareholders of Eletson Holdings (together, the "**Shareholders**") also filed an *Omnibus Objection of the Majority Shareholders of Eletson Holdings Inc. to the Trustee Motions* (the "**Shareholder Objection**," and together with the Objection to the UST Motion and the Omnibus Objection, the "**Objections**") (Docket No. 518).

On April 2, 2024, the Court received the following replies to the Trustee Motions: (i) the *Reply of the United State Trustee in Support of The United States Trustee's Motion to Appoint a Chapter 11 Trustee* (the "**UST Reply**") (Docket No. 544); (ii) the *Petitioning Creditors' Reply In Support of Motions for Entry of an Order Appointing a Chapter 11 Trustee* (the "**PC Reply**") (Docket No. 547); and (iii) the *Reply of the Official Committee of Unsecured Creditors in Support of Its Motion for an Order Appointing a Chapter 11 Trustee* (the "**Committee Reply**," and together, with the UST Reply and the PC Reply, the "**Replies**") (Docket No. 549).

The PC Reply is supported by the *Declaration of Jared C. Borriello in Support of Petitioning Creditors' Reply in Support of Motions for Entry of an Order Appointing a Chapter 11 Trustee* (the "**Second Borriello Declaration**") (Docket No. 548).

The Court held evidentiary hearings on the Trustee Motions on April 9 (Docket No. 593, the "**April 9 Transcript**"), April 10 (Docket No. 601, the "**April 10 Transcript**"), and April 11, 2024 (Docket No. 602, the "**April 11 Transcript**") (collectively the "**Hearings**"). Consistent with the Court's scheduling order entered in connection with the Hearings, the parties submitted all direct testimony by declaration. (Docket No. 467 at ¶ 7). Accordingly, at the Hearings, the Court admitted the following direct testimony into the record for the Creditors: (i) the *Witness Declaration of Michael Cordasco in Support of the Motion of the Official Committee of Unsecured Creditors for an Order Appointing a Chapter 11 Trustee* (the "**Cordasco Witness Declaration**") (Docket No. 524); (ii) the *Declaration of Jeff Drake in Support of the Motion of the Official Committee of Unsecured Creditors for an Order Appointing a Chapter 11 Trustee* (the "**Drake Declaration**") (Docket No. 550); and (iii) the *Declaration of Cynthia Romano in Support of the Motion of the Official Committee of Unsecured Creditors for an Order Appointing a Chapter 11 Trustee* (the "**Romano Declaration**") (Docket No. 551).

The Court also admitted the following direct testimony for the Debtors: (i) the *Declaration of Vasilis Hadjieleftheriadis in Support of Debtors' Opposition to the Motion to Appoint a Trustee* (the "**Hadjieleftheriadis Declaration**") (Docket No. 514); (ii) the *Declaration of Vassilis Kertsikoff in Support of the Debtors' Omnibus Objection to (i) Motion of the Official Committee of Unsecured Creditors for an Order Appointing a Chapter 11 Trustee and Joinder of Petitioning Creditors and (ii) Petitioning Creditors' Emergency Motion to Appoint a Trustee* (the "**Kertsikoff Declaration**") (Docket No. 516); (iii) the *Declaration of*

Laskarina Karastamati in Support of Debtors' Opposition to the Motion to Appoint a Trustee (the "**Karastamati Declaration**") (Docket No. 519); (iv) the *Witness Declaration of Nikolaos Veraros* (the "**Veraros Declaration**") (Docket No. 520); (v) the *Witness Declaration of Marina Orfanoudaki* (the "**Ofanoudaki Declaration**") (Docket No. 521); (vi) the and *Declaration of CLLR. T. Negbalee Warner* (the "**Warner Declaration**") (Docket No. 522).[2]

The UST, the Debtors, and the Creditors each submitted exhibit lists, and the exhibits contained within them were also admitted into the record. (Docket No. 554 ("**UST Ex.**"); Docket No. 560 ("**Debtor Ex.**"), Docket No. 569 ("**Creditor Ex.**"), respectively).[3] Finally, the Creditors and the Debtors each submitted deposition designations and counter designations, which the Court will also consider in connection with this ruling. (Docket Nos. 555 and 556, respectively).

Following the Hearings, the Court received post-trial briefs from the: (i) Committee (the "**Committee Brief**") (Docket No. 594); (ii) Debtors (the "**Debtor Brief**") (Docket No. 595); (iii) UST (the "**UST Brief**") (Docket No. 596); (iv) Shareholders (the "**Shareholder Brief**") (Docket No. 597); and (v) Petitioning Creditors (the "**PC Brief**") (Docket No. 598).[4]

The Court has reviewed and considered the Trustee Motions, the Objections, the Replies, the declarations, the testimony, the arguments of counsel, the briefs, and the record as a whole.

[2] Unredacted versions of the Hadjieleftheriadis Declaration, Kertsikoff Declaration, Karastamati Declaration, and Veraros Declaration were filed after the Hearings. (Docket Nos. 579, 580, 581, and 582, respectively).
[3] References to "UST Ex. __" are to exhibits submitted in the UST's Preliminary Exhibit List. (Docket No. 554). References to "Debtor Ex. __" are to exhibits submitted in the Debtors' Exhibit List. (Docket No. 560). References to "Creditor Ex. __" are to exhibits submitted in the Joint Amended Exhibit List submitted by the Committee and the Petitioning Creditors. (Docket No. 569).
[4] Also pending before the Court are two evidentiary motions. First, on the eve of the Hearings, the Petitioning Creditors filed the *Omnibus Motion in Limine to Exclude Evidence filed in Support of the Debtors' Trustee Motion Objections* (the "**PC Motion in Limine**") (Docket No. 568). Second, the Debtors raised oral motions to exclude the Drake Declaration and Romano Declaration at the Hearings (the "**Debtors' Motion to Exclude**") (April 10 Transcript 64:7–65:9; 103:23–104:7). The Debtors and the Committee responded to the evidentiary motions in their post-hearing briefs (Committee Brief at ¶¶ 24–27; Debtor Brief at ¶¶ 68–71). Accordingly, the Court will also address the PC Motion in Limine and the Debtors' Motion to Exclude herein.

II. JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157(a) and (b)(1) and the Amended Standing Order of Reference dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A).

III. BACKGROUND

A. THE DEBTORS' ORGANIZATIONAL STRUCTURE

Debtor Eletson Holdings is the ultimate parent of a collection of entities engaged in international gas shipping (the "**Eletson Enterprise**"). (Committee Motion at ¶ 11). The Eletson Enterprise owns and operates a fleet of medium and long-range gas tanker ships that carry a wide range of refined petroleum products, as well as crude oil. (*Id.*) The Eletson Enterprise "operates its fleet through wholly owned subsidiaries of Eletson Holdings, which own or charter the vessels." (*Id.* at ¶ 12). The fleet is managed by non-debtor Eletson Corporation ("**Eletson Corp.**"), another wholly owned subsidiary of Eletson Holdings. (*Id.*) The Eletson Enterprise currently includes 18 ships, 14 of which are operated by non-debtor Eletson Gas LLC ("**Eletson Gas**"). (*Id.*) Each of the Debtors are holding companies that do not maintain any operations or employees other than their officers and directors. (Kertsikoff Declaration at ¶ 13).

Eletson Holdings and its subsidiaries are closely held, controlled, and managed by the Kertsikoff, Hadjieleftheriadis, and Karastamati families (the "**Principal Families**"). (Committee Motion at ¶ 13). Each of the Principal Families owns approximately 30.7% of Eletson Holdings indirectly through Liberian trust companies. (*Id.*) The remaining equity is held by two other families, the Zilakos and Andreoulakis families (collectively, with the Principal Families, the "**Families**"). (*Id.*) All of the Families are themselves relatives of each other. (*Id.*)

Members of the Principal Families are also "directors and officers of Eletson Holdings and of its various subsidiaries, including Eletson Corp. and Eletson Gas." (*Id.* at ¶ 14). The

Families also own certain entities that are unaffiliated with the Eletson Enterprise (the "**Cypriot Nominees**"). (*Id.*)

B. THE NOTES

In December 2013, Eletson Holdings and one of its affiliates issued the 9.625% First Preferred Ship Mortgage Notes due 2022 (the "**Old Notes**"). (Kertskoff Declaration at ¶ 19). The Old Notes had a face value of $300 million. (*Id.*) Deutsche Bank served as the trustee for the Old Notes. (*Id.*)

In May 2018, Eletson Finance and Eletson Holdings initiated an exchange for the Old Notes (the "**Note Exchange**"). (*Id.* at ¶ 20). "Approximately 2% of the holders of [the] Old Notes chose not to participate in the Note Exchange and retained their Old Notes." (*Id.*) In July 2018, the Debtors finalized the Note Exchange and issued the First Preferred Ship Mortgage Notes due 2022 (the "**Exchange Notes**"). (*Id.*) The Exchange Notes had a face value of $314,068,360. (*Id.*) Wilmington served as the trustee for the Exchange Notes. (*Id.* at ¶ 21).

In 2019, the Debtors entered into two restructuring support agreements with Wilmington and certain consenting noteholders: (i) the Restructuring Support Agreement dated June 24, 2019 (the "**First RSA**"), and (ii) the Restructuring Support Agreement dated October 29, 2019 (the "**Second RSA**" and, together with the First RSA, the "**RSA's**"). (*Id.* at ¶ 23).

C. ELETSON GAS, MURCHINSON, AND THE ARBITRATION

In October 2013, Eletson Holdings and Blackstone Tactical Opportunities ("**Blackstone**") formed Eletson Gas, a $700 million liquefied petroleum gas shipping joint venture. (Kertsikoff Declaration at ¶ 84). As part of the joint venture, Eletson Holdings held the common shares of Eletson Gas (the "**Eletson Gas Common Shares**"), and Blackstone held the

preferred shares of Eletson Gas (the "**Eletson Gas Preferred Shares**"). (*Id.* at ¶ 85; Karastamati Declaration at ¶ 13).

In November 2021, Levona Ltd. ("**Levona**") acquired Blackstone's stake in Eletson Gas. (Kertsikoff Declaration at ¶ 89). Levona is a special purpose entity affiliated with Murchinson Inc. ("**Murchinson**"). (Karastamati Declaration at ¶ 11). Murchinson is also affiliated with another special purpose entity, Pach Shemen LLC ("**Pach Shemen**"), which is one of the Petitioning Creditors. (*Id.*) As part of Levona's acquisition, Levona became a party to Eletson Gas's Limited Liability Company Agreement (the "**LLCA**"). (*Id.* at ¶ 13).

On March 11, 2022, Eletson Holdings and Levona negotiated a Binding Offer Letter (Debtor Ex. 57, the "**BOL**") whereby Levona would sell its Preferred Shares to Eletson Gas or Eletson Gas' nominee for $23 million. (Karastamati Declaration at ¶ 17; BOL at § 2.1). Following execution of the BOL, a dispute arose over whether the purchase option contained in the BOL had been properly exercised. (Karastamati Declaration at ¶ 18). Accordingly, in July 2022, Eletson Holdings and Eletson Corp. initiated a JAMS arbitration (the "**Arbitration**") against Levona (and together with Eletson Holdings and Eletson Corp., the "**Arbitration Parties**") before the Honorable Ariel Belen (the "**Arbitrator**") pursuant to the LLCA seeking a determination of the ownership of the Eletson Gas Preferred Shares. (*Id.* at ¶¶ 4, 19).

Specifically, Eletson Holdings and Eletson Corp. asserted claims against Levona for breach of the LLCA and breach of the covenant of good faith and fair dealing. (See Creditor Ex. 76 at 9).[5] First, Eletson Holdings and Eletson Corp. asserted that Murchinson's acquisition of Blackstone's interests in Eletson Gas was void *ab initio* due to "deceitful and wrongful conduct," including: (i) bribing Eletson Corp.'s CFO, Peter Kanelos, causing him to disclose confidential

[5] Creditor Ex. 76 is the *Final Award* issued by the Arbitrator dated September 29, 2023 (the "**Final Award**"), as described below.

Eletson Gas information prior to Levona's purchase of the Preferred Shares (*id.* at 9–10); (ii) communicating directly with Eletson Gas' financiers and lenders in violation of an NDA (*id.* at 10); and (iii) engaging in industrial sabotage that led to the arrest of Eletson Gas vessels prior to Murchinson's acquisition of the Preferred Shares. (*Id.*)

Second, Eletson Holdings and Eletson Corp. claimed that Levona breached the LLCA and the Eletson Gas management agreements after acquiring Blackstone's shares by, *inter alia*: (i) attempting to fire Eletson Corp. as the manager of Eletson Gas and Eletson Gas' subsidiaries' vessels; (ii) failing to disclose pre-acquisition misuse and breaches of confidential information; (iii) continuing to conspire with Peter Kanelos to liquidate and harm Eletson Gas; and (iv) conspiring with Eletson Gas' corporate counsel, Watson Farley Williams, to take actions against Eletson Gas' interests. (*Id.*)

Third, Eletson Holdings and Eletson Corp. claimed that Levona, Murchinson, and Pach Shemen, violated an injunction entered in the Arbitration (the "**Status Quo Injunction**") by: (i) wrongfully declaring Eletson Gas in default of a loan made by Levona to Eletson Gas; (ii) trying to sell the Symi and Telendos (two of the vessels owned by subsidiaries of Eletson Gas); and (iii) "directing the purchase of a controlling position in debt securities of [Eletson] Holdings for the purpose of commencing litigation against [Eletson] Holdings and the involuntary [bankruptcy] . . . ." (*Id.*)

Finally, Eletson Holdings and Eletson Corp. asserted claims against Levona for failing to acknowledge Eletson Holdings and Eletson Corp.'s compliance with the BOL and other transaction documents by: (i) failing to transfer the Eletson Gas Preferred Shares; and (ii) continuing to act on behalf of Eletson Gas in a bad faith manner, including by entering into a contract with Unigas (the "**Unigas LOI**") without proper consent. (*Id.* at 11)

For these actions, Eletson Holdings and Eletson Corp. sought declaratory relief regarding the ownership of the Preferred Shares, as well as "compensatory damages of at least $71 million, punitive damages in the range of 3 to 9.63 times the compensatory damages, pre-judgment interest at ten percent per annum, costs, and attorney's fees." (*Id.*)

In response, Levona asserted counterclaims against Eletson Holdings and Eletson Corp., under the theory that Levona remained the holder of the Preferred Shares. (*Id.*) Accordingly, Levona sought declaratory relief regarding its rights under the LLCA. (*Id.*) Levona also sought monetary damages for failure to attend board meetings, which prevented Eletson Gas from refinancing certain debt and from engaging in due diligence in connection with the Unigas LOI. (*Id.*) Levona also asserted a claim for tortious interference in connection with the Unigas LOI and conversion for denying Levona the ability to sell the Symi and Telendos, two of the vessels owned by Eletson Gas. (*Id.*) As compensation for these claims, Levona sought compensatory damages of more than $3 million, plus additional amounts for any profit due to Levona from Eletson Gas as the holder of the Eletson Gas Preferred Shares, "and any decrease in net profit from the sale of the vessels as compared to the Unigas LOI." (*Id.*) Levona also sought $2 million in punitive damages, post-judgment interest, costs, and attorney's fees. (*Id.*)

D. THE INVOLUNTARY BANKRUPCY PROCEEDINGS

On March 7, 2023 (the "**Petition Date**"), certain of the Petitioning Creditors, (Pach Shemen, VR Global Partners, L.P., and Alpine Partners (BVI), L.P.) filed involuntary petitions against the Debtors under Chapter 7 of the Bankruptcy Code (the "**Involuntary Petitions**"). (Docket No. 1). They were later joined by the remaining 11 Petitioning Creditors. (Committee Motion at ¶ 19).

On March 13, 2023, the Debtors filed the *Motion for Relief from Stay to Proceed with, or to Confirm the Inapplicability of, the Automatic Stay to Prepetition Arbitration Proceedings* (the "**Stay Relief Motion**"). (Docket No. 5). The Debtors also moved to dismiss the Involuntary Petitions on April 14, 2023 (the "**Motion to Dismiss**"). (Docket No. 40).

On April 17, 2023, the Court so-ordered a stipulation between the parties regarding the Stay Relief Motion (the "**Stay Relief Stipulation**"). (Docket No. 48). As is relevant here, the Stay Relief Stipulation modified the automatic stay "solely to the extent necessary and for the sole purpose of permitting . . . a final determination or award to be made by the Arbitrator . . . with respect to the claims *currently* pending in the Arbitration." (*Id.* at ¶ 3) (emphasis added). Moreover, the Stay Relief Stipulation provided that:

> Any Arbitration Award, whether in favor of any Arbitration Party, shall be stayed pending further order of the Bankruptcy Court on a motion noticed following the issuance of the Arbitration Award. For avoidance of doubt, no Arbitration Party shall transfer, dispose of, transact in, hypothecate, encumber, impair or otherwise use any such Arbitration Award or any asset or property related thereto absent a further order of this Court.

(*Id.* at ¶ 4).

E. THE FINAL AWARD AND THE CONFIRMATION PROCEEDINGS

Following entry of the Stay Relief Stipulation, Eletson Holdings and Eletson Corp. argued for the first time in the Arbitration that the Preferred Shares had been transferred to the Cypriot Nominees and were therefore not held by Eletson Gas. (*See* Creditor Ex. 3[6] at 20–21 (noting that an April 25, 2023, statement was the first time "Eletson asserted in the arbitration that the Preferred [Shares] were transferred to a nominee" and that previously "Eletson [Holdings and Eletson Corp.] claimed that . . . [they were] the sole unit holder of the company");

[6] Creditor Ex. 3 is the *Opinion and Order* dated February 9, 2024, issued by Judge Liman in the District Court (the "**Confirmation Ruling**"), as described below.

Creditor Ex. 19[7] at 153:2–24 (where the Debtors' counsel stated at a hearing in the Arbitration that he urged his client to "just transfer [the Preferred Shares] to the nominees," and his clients informed him that they "ha[d] already done it"); Final Award at 30 (noting that "[i]t is undisputed that Eletson [Holdings and Eletson Corp.] raised this contingent transfer to Cypriot [N]ominees for the first time in [their] Rule 20(b) submission on May 5, 2023")).[8]

On July 28, 2023, the Arbitrator issued an interim award in favor of Eletson Holdings and Eletson Corp., which award was subsequently modified on August 15, 2023. (Kertsikoff Declaration at ¶ 22). The interim award was made final by the Final Award, issued on September 29, 2023. (*Id.*)

In the Final Award, the Arbitrator found that Eletson Gas had exercised the option under the BOL to acquire the Preferred Shares by transferring shares in two vessels owned by Eletson Gas (the Symi and the Telendos) to Levona. (Final Award at 34–38). The Final Award also concluded that the Preferred Shares had been transferred to the Cypriot Nominees as of March 11, 2022. (*Id.* at 96). Though not discussed in the Final Award, the Court notes that the transfer of the Preferred Shares to the Cypriot Nominees apparently occurred at a "family meeting," (Debtor Ex. 585 (the "**Karastamati Deposition**") at 71–14–72:13) with the same individuals standing on both sides of the transaction. (*Id.* at 15:17–19, 22:18–23:14, 35:11–13 (where Karastamati states that she is a director and the president of Eletson Holdings, a director of Eletson Gas, and an owner of one of the Cypriot Nominees); Karastamati Declaration at ¶ 1 (where Karastamati states that she is a secretary and director of Eletson Gas)).

[7] Creditor Ex. 19 is the transcript of the May 15, 2023, hearing in the Arbitration (the "**May 15 Arbitration Hearing**").

[8] The Court notes that the Arbitrator and the District Court each found different dates as to when Eletson Holdings and Eletson Corp. raised for the first time the transfer to the Cypriot Nominees. Nevertheless, both dates post-date the Stay Relief Stipulation.

Additionally, the Final Award assessed nearly $87 million in damages against Levona, plus fees, costs, and interest. (Final Award at 99–101). Notably, none of the damages awarded in the Final Award were awarded to Eletson Holdings. Instead, approximately half of the damages were awarded to Eletson Gas, and half were awarded to the Cypriot Nominees because the Arbitrator found that they were the ones directly harmed by Levona's conduct. (*Id.* at 64 (stating that "[t]he damages should be paid to the Preferred Nominees, as they flow directly from Levona's refusal to relinquish the preferred interests, and the Preferred Nominees hold all title and interest in the preferred interest"); *Id.* at 66–67 (describing damages that should be awarded to Eletson Gas for, *inter alia*, the leaking of Eletson Gas information, reputational harm to Eletson Gas, and lost business opportunities)).

On August 18, 2023, Eletson Holdings and Eletson Corp. filed a petition in the United States District Court for the Southern District of New York (the "**District Court**") to confirm the Final Award, including the portion finding that the Preferred Shares were transferred to the Cypriot Nominees and the portion awarding damages to Eletson Gas and the Cypriot Nominees. (Committee Motion at ¶ 43). The District Court issued the Confirmation Ruling on February 15, 2024, which confirmed the Final Award in part, but vacated certain portions of the damages and certain findings made by the Arbitrator relating to Levona, Pach Shemen, and Murchinson's liability under an alter ego theory.[9] (Confirmation Ruling at 81 (vacating "the portions of the Award that purport to find Murchinson and Pach Shemen liable, or that require them to pay damages"); *Id.* at 123–124)).

[9] The Court further notes that, following the Hearings in this matter, the District Court remanded the Final Award to the Arbitrator to clarify certain findings relating to the award of punitive damages. (Docket No. 696 at 21). Additionally, Levona filed a motion in the District Court seeking reconsideration of the Confirmation Ruling. (*Id.*) Upon filing of the reconsideration motion, the District Court stayed the remand to the Arbitrator pending resolution of the reconsideration motion. (*Id.* at 22).

F. CONVERSION TO VOLUNTARY CHAPTER 11

While the Arbitration was ongoing, the bankruptcy cases progressed. At a hearing before this Court on September 6, 2023, the parties stipulated to conversion of these cases to voluntary Chapter 11 proceedings (the "**Conversion Stipulation**"), which stipulation was later memorialized in the *Order Converting These Cases to Cases Under Chapter 11*. (Docket No. 215).

On October 10, 2023, the Debtors filed their schedules of assets and liabilities and statements of financial affairs (the "**Schedules**"). (Committee Motion at ¶ 22 (citing Docket Nos. 216–221)). On October 13, 2023, the UST noticed a Section 341(a) meeting of creditors (the "**341 Meeting**") for November 7, 2023. (*Id.* at ¶ 23 (citing Docket No. 223)). Accordingly, by operation of Bankruptcy Rule 2015.3[10], the Debtors were to file reports regarding their interests in their subsidiaries (the "**2015.3 Reports**") by October 31, 2023, 7 days prior to the 341 Meeting. (*Id.*) However, the Debtors failed to file their 2015.3 reports on October 31, 2023. (*Id.*)

On October 20, 2023, the UST appointed the Committee. (Docket No. 233). The Committee's members are Aegean Baltic Bank S.A., Gene B. Goldstein, and Wilmington. (*Id.*) Deutsche Bank "serves as an ex-officio member of the Committee." (Committee Motion at ¶ 21).

On November 6, 2023, the 341 Meeting was adjourned because the Debtors' witness was unavailable. (*Id.* at ¶ 24). The 341 Meeting was rescheduled for November 14, 2023; however, the Debtors' witness was once again unavailable. (*Id.*)

[10] Bankruptcy Rule 2015.3(a) provides that Chapter 11 debtors "shall file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest . . . ." Rule 2015.3(a). Bankruptcy Rule 2015.3(b) further provides that "[t]he first report required by this rule shall be filed no later than seven days before the first date set for the meeting of creditors under §341 of the Code. Subsequent reports shall be filed no less frequently than every six months thereafter, until the effective date of a plan or the case is dismissed or converted." Rule 2015.3(b).

"On November 20, 2023, the Debtors filed 2015.3 Reports for ten of their 73 subsidiaries." (*Id.* at ¶ 25). However, the Debtors failed to produce a report for Eletson Gas on that date. (*Id.* at ¶ 26). On November 30, 2023, the Debtors filed an amended 2015.3 Report concerning Eletson Gas. (Committee Motion at ¶ 27 (citing Docket No. 298)).[11]

On December 11, 2023, the Debtors formed an independent committee (the "**Demand Review Committee**") in order to resolve certain objections from the U.S. Trustee to Reed Smith's retention as counsel for the Debtors in these cases. (Docket No. 330 at ¶¶ 18–20). The Demand Review Committee is empowered to investigate potential causes of action on behalf of the Debtors, including those against the Cypriot Nominees stemming from the transfer of the Preferred Shares. (Kertsikoff Declaration at ¶ 49 (citing Docket No. 329-2); Hadjieleftheriadis Declaration at ¶¶ 102–103). Importantly, the Demand Review Committee is only authorized to investigate claims upon receipt of a demand to do so. (*Id.*) As of March 22, 2024, no demand had been made of the Demand Review Committee. (Hadjieleftheriadis Declaration at ¶ 104).

On January 23, 2024, the Debtors filed their *First Joint Plan of Reorganization of Debtors under Chapter 11 of the United States Bankruptcy Code* (Creditor Ex. 54, the "**Debtors' First Plan**") on the day the 120-day exclusivity period ended. As is relevant here, under the Debtors' First Plan, the Debtors' shareholders would retain their equity interests in the reorganized Debtors in exchange for a $10 million cash contribution, despite every class of claims being impaired. (*Id.* at 18; see also *id.* at 13–14 (noting that all classes are impaired except for equity interests)). Additionally, the Debtors' First Plan contemplated that the Debtors would assign all claims and causes of action assertable by the Debtors to a litigation trust. (*Id.* at 15).

[11] The Committee also asserts that the 2015.3 Reports "were (and remain) deficient and did not disclose intercompany balances." (Committee Brief at ¶ 7 (citing Cordasco Declaration at ¶ 30); *see also* Committee Motion at ¶ 25).

Any proceeds stemming from successful litigation of any claims assigned to the trust would also be contributed to the plan. (*Id.*) At the time of filing, the plan was not market tested.[12] However, on March 26, 2024, the Petitioning Creditors filed their *Joint Chapter 11 Plan of Reorganization of Eletson Holdings Inc. and its Affiliated Debtors* (the "**Petitioning Creditors' First Plan**") (Docket Nos. 531), and on May 14, 2024, the Petitioning Creditors filed their *Further Amended Joint Chapter 11 Plan of Reorganization of Eletson Holdings Inc. and its Affiliated Debtors* (the "**Petitioning Creditors' Amended Plan**"). (Docket No. 695).

On February 7, 2024, the Court entered an order establishing procedures for interim compensation and reimbursement of expenses of professionals in these cases (the "**Interim Compensation Order**"). (Docket. No. 398). The Interim Compensation Order provides that the Debtors "shall promptly pay" all unobjected-to fees following the expiration of the objection deadline each month. (*Id.* at ¶ (I)(g)).

Following entry of the Interim Compensation Order, the Committee and FTI Consulting ("**FTI**") filed monthly fee statements. (Docket Nos. 399–401). On February 22, 2024, the

[12] Following the Hearings, the Debtors filed their *Second Amended Joint Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code* (the "**Debtors' Second Amended Plan**"). (*See* Docket No. 671). The Debtors' Second Amended Plan increased the shareholder new value contribution to $30 million. (*Id.* at 13). Notably, however, under the Debtors' Second Amended Plan, the litigation trust trustee would be enjoined from pursuing any claims assigned to the trust relating to the transfer of the Preferred Shares to the Cypriot Nominees until the earlier of: "(i) a final, non-appealable, determination in favor of Levona . . . that the preferred shares of Eletson Gas were not transferred to [Eletson Holdings or the Cypriot Nominees]; (ii) a settlement or satisfaction of claims asserted by [Eletson Holdings, Eletson Corp. or the Cypriot Nominees] against Levona; or (iii) [Eletson Holdings, Eletson Corp. and the Cypriot Nominees] refuse to [contribute 75% of any recovery against Levona to the plan]." (*Id.*) In the event that clause (i) is satisfied, the Debtors' Second Amended Plan provides that the litigation trust trustee would have no right to pursue claims against Eletson Holdings, Eletson Corp., or the Cypriot Nominees. (*Id.*) In the event that Eletson Holdings or Eletson Corp. satisfy clause (ii) by settling with Levona, the Debtors' Second Amended Plan provides that the litigation trust trustee shall be required to settle and release all potential claims against Eletson Holdings, Eletson Corp., and the Cypriot Nominees in exchange for 75% of the cash recoveries against Levona. (*Id.*) The Debtors' Second Amended Plan provides that such payment shall "(i) be paid in full and final satisfaction of [all claims against Eletson Holdings, Eletson Corp., and the Cypriot Nominees], and (ii) constitute a redemption by Eletson Gas of the net enterprise value of the common shares of Eletson Gas as of the Effective Date." (*Id.*) However, if Eletson Holdings, Eletson Corp., and the Cypriot Nominees fail to comply with the settlement, the Second Amended Plan provides that the litigation trust trustee may commence litigation against them. (*Id.*)

Debtors filed objections to the interim fee statements. (Docket Nos. 431–432). However, the Debtors failed to make any payment on the portion of the fees and expenses to which they did not object as required by the Interim Compensation Order. (Creditor Ex. 26, 27 (where the Debtors detail their inability to make such payments)). In letters to the Court, the Debtors indicated that the reason they did not make the payments was because the Debtors had no liquidity and needed to seek debtor-in-possession financing. (*Id.*)

Accordingly, on March 7, 2024, the Debtors filed the *Motion for Entry of Interim and Final Orders (a) Authorizing the Debtors to Obtain Post-Petition Financing; (b) Granting Liens and Providing Superpriority Administrative Expense Status; (c) Modifying the Automatic Stay; (d) Scheduling a Final Hearing; and (e) Granting Related Relief* (the "**DIP Motion**"). (Docket No. 458). The DIP Motion sought approval of a senior-secured loan facility in the amount of $4,000,000 to be provided by one of the Debtors' subsidiaries, EMC Gas. (*Id.* at 1–2). In the DIP Motion, the Debtors stated that the DIP Motion was necessary because "[t]he Debtors do not believe they can force a dividend from their subsidiaries under applicable non-bankruptcy law (including the organizational arrangements) and certain contractual obligations binding the subsidiaries." (Creditor Ex. 126, the "**DIP Motion**" at ¶ 9).

However, following the filing of the DIP Motion, the Debtors paid the unobjected-to fees through their subsidiaries, despite previously proclaiming that such payments could not be made. (PC Brief at ¶ 13 (citing Creditor Ex. 26–27 (where the Debtors describe their inability to make such payments in letters to the Court); (Creditor Ex. 29 (where the Debtors explain in an email that "the Debtors have received sufficient funds from [a] subsidiary [] to pay the currently outstanding payment obligations due as of today"))).

On March 26, 2024, the Debtors allowed their exclusivity periods to lapse without seeking an extension. That same day, the Petitioning Creditors filed the Petitioning Creditors' First Plan . (*See* Docket No. 531).

Finally, the Court notes that the parties have generally acted in an adversarial manner throughout these proceedings. For instance, the Court has held numerous status and discovery conferences, much of which is detailed in approximately 26 letters filed between February 9, 2024, and March 25, 2024. (*See* UST Reply (citing Docket Nos. 402; 403; 407; 414; 415; 416; 423; 437; 439; 441; 443; 446; 447; 448; 451; 452; 453; 460; 463; 466; 470; 471; 472; 483; 490; 528)).

IV. LEGAL STANDARDS AND DISCUSSION

A. EVIDENTIARY DISPUTES

Preliminarily, the Court must resolve certain unresolved evidentiary disputes. First, on the eve of the Hearings, the Petitioning Creditors filed the PC Motion in Limine. (Docket No. 568). Second, the Debtors raised the Debtors' Motion to Exclude at the Hearings. (April 10 Transcript 64:7–65:9; 103:23–104:7). The Court will address these motions in turn.

1. PC Motion in Limine

In the PC Motion in Limine, the Petitioning Creditors first argue that the declarants' attestations that are not based upon personal knowledge are improper and inadmissible. (PC Motion in Limine at ¶¶ 4–6). Specifically, the Petitioning Creditors assert that none of the Debtors' declarations "make clear that they are based upon the [d]eclarants' personal knowledge" and instead state that they are either based in whole or in part on the declarants' review of documents or do not reference the declarants' personal knowledge at all. (*Id.*) Second, the Petitioning Creditors argue that certain attestations made by the declarants are inadmissible because they represent the declarants' views about what the "documents mean[] and argue how

the Court should construe them." (*Id.* at ¶¶ 7–9). Next, the Petitioning Creditors argue that many of the declarations provide the declarants' opinions regarding factual and legal determinations that need to be made by the Court. (*Id.* at ¶¶ 10–12). Further, the Petitioning Creditors argue that the declarations contain irrelevant subject matter that has "no bearing upon the resolution of the Motions." (*Id.* at ¶¶ 13–18). Finally, the Petitioning Creditors argue that: (i) the declarants' attestations regarding the Debtors' management expertise is inadmissible (*id.* at ¶¶ 19–22); (ii) the declarations made by the Debtors' management, namely the Kertsikoff Declaration, the Hadjieleftheriadis Declaration, and the Karastamati Declaration, are self-serving and should be afforded little weight (*id.* at ¶ 23); (iii) the Veraros Declaration is inadmissible because the declaration contains "factual and legal opinions that are not based upon Veraros' claimed expertise and, as bald and admitted speculation, are neither based upon sufficient facts/data and reliable principles/methods nor reflect the reliable application of such methods to such facts, and cannot be helpful to the Court" (*id.* at ¶¶ 24–26); and (iv) most of the Debtors' exhibits and deposition declarations are irrelevant and inadmissible (*id.* at ¶¶ 27–28).

In response, the Debtors argue that: (i) caselaw supports admissibility of evidence in a bench trial (Debtor Brief at ¶ 68); (ii) declarants' may testify to business records they reviewed in their official capacity (*id.* at ¶ 69); (iii) declarants may obtain personal knowledge from reviewing documents (*id.* at ¶ 70); and (iv) the declarants' references to Murchinson, Levona, and the Arbitration are relevant to these proceedings (*id.* at ¶ 70).

The Court agrees with the Debtors. Because these proceedings were conducted as a bench trial, "the potential for prejudice is minimal." *Steinhilber v. Kirkpatrick, M.*, No. 18CIV1251VBJCM, 2020 WL 9074808, at *14 (S.D.N.Y. Aug. 21, 2020), *report and recommendation adopted sub nom. Steinhilber v. Kirkpatrick*, No. 18 CV 1251 (VB), 2021 WL

1254554 (S.D.N.Y. Apr. 5, 2021). This is so because, in the context of a bench trial, "the factfinder knows the purpose for which evidence is admitted and is presumed to rest [their] verdict on the proper inferences to be drawn from such evidence." *United States v. Duran-Colon*, 252 F. App'x 420, 423 (2d Cir. 2007) (citations omitted). Indeed, "'the more prudent course in a bench trial [is] to admit into evidence doubtfully admissible records,' and to permit the parties to aim their arguments at the weight of the evidence." *Wechsler v. Hunt Health Sys., Ltd.*, No. 94 CIV. 8294 (PKL), 2003 WL 22764545, at *3 (S.D.N.Y. Nov. 21, 2003) (quoting *Van Alen v. Dominick & Dominick, Inc.*, 560 F.2d 547, 552 (2d Cir. 1977)). Accordingly, the Court finds that the Petitioning Creditors' arguments "are better directed toward the weight of the evidence, not the admissibility." *Id.* The Court will therefore deny the PC Motion in Limine and afford the Debtors' evidence the weight that the Court deems appropriate.

2. Debtors' Motion to Exclude

In the Debtors' Motion to Exclude, the Debtors argue that the expert testimony of Jeffrey Drake and Cynthia Romano should be excluded because both witnesses were not identified as experts in advance of the Hearings, and because the Debtors did not provide expert reports or a list of documents that the purported experts reviewed in connection with their testimony. (April 10 Transcript 64:7–65:9; 103:23–104:7).

In response, the Committee argues that it was not "required to submit formal 'reports,'" and that both experts' direct testimony was disclosed in advance of the Hearings but the Debtors chose not to depose them. (Committee Brief at ¶ 24). The Committee also asserts that both experts are qualified to offer the testimony they submitted to the Court. (*Id.* at ¶ 25).

The Court agrees with the Committee. Bankruptcy Rule 9014(c) makes clear that certain portions of Federal Rule of Civil Procedure 26 (dealing with expert disclosures) do not apply in

contested matters. Fed. R. Bankr. P. 9014(c) (noting that "[t]he following subdivisions of Fed. R. Civ. P. 26, as incorporated by Rule 7026, shall not apply in a contested matter unless the court directs otherwise: 26(a)(1) (mandatory disclosure), 26(a)(2) (disclosures regarding expert testimony) and 26(a)(3) (additional pre-trial disclosure), and 26(f) (mandatory meeting before scheduling conference/discovery plan)"). Here, the Court's scheduling order did not require any additional expert disclosures. (*See* Docket No. 467). In fact, as asserted by the Committee, the experts' "full direct testimony was disclosed by declaration and the Debtors had the option of deposing them ahead of the [H]earing[s] had they chosen to do so." (Committee Brief at ¶ 24 (citing Docket No 467 at ¶ 9).

Additionally, the Court is more than capable of assessing the qualifications of the experts presented by the Creditors. *Joseph S. v. Hogan*, No. 06 CIV. 1042 BMC SMG, 2011 WL 2848330, at *3 (E.D.N.Y. July 15, 2011) (citing *BIC Corp. v. Far Eastern Source Corp.*, 23 F. App'x 36, 39 (2d Cir. 2001)) (noting that "the Court can take in the evidence freely and separate helpful conclusions from ones that are not grounded in reliable methodology"). For these reasons, the Debtors' Motion to Exclude is denied.

B. THE TRUSTEE MOTIONS

Chapter 11 of the Bankruptcy Code generally allows debtors to remain in control of their property. 11 U.S.C. § 1107. "While there is a presumption that a debtor should be permitted to remain in possession of its business, that presumption is not absolute." *In re Sillerman*, 605 B.R. 631, 640 (Bankr. S.D.N.Y. 2019) (citing *In re Ionosphere Clubs, Inc.*, 113 B.R. 164, 167 (Bankr. S.D.N.Y. 1990) (Lifland, C.J.); *In re Ashley River Consulting, LLC*, 2015 WL 1540941, at *8 (Bankr. S.D.N.Y. Mar. 31, 2015)).

Indeed, "a debtor-in-possession is obligated to perform all of the obligations of a trustee identified in Bankruptcy Code section 1106, *see* 11 U.S.C. § 1107, and owes fiduciary duties to his estate and creditors." *Id.* (citing *In re Smart World Techs., LLC*, 423 F.3d 166, 175 (2d Cir. 2005); *In re Centennial Textiles, Inc.*, 227 B.R. 606, 612 (Bankr. S.D.N.Y. 1998); *In re V. Savino Oil & Heating Co., Inc.*, 99 B.R. 518, 524 (Bankr. E.D.N.Y. 1989)). Accordingly, "[t]he willingness to allow a Debtor to remain in possession of its assets is predicated upon the assumption that the Debtor will carryout its fiduciary obligations." *Id.* (citation omitted).

However, Section 1104 of the Bankruptcy Code provides that, upon request of a party in interest or the United States Trustee, the court shall order the appointment of a trustee:

> (1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or
> (2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

11 U.S.C. § 1104.

The appointment of a Chapter 11 Trustee is an "extraordinary remedy," and the party seeking the appointment of a Trustee "has the burden of showing by 'clear and convincing evidence' that the appointment of a trustee is warranted." *In re Bayou Grp., LLC*, 564 F.3d 541, 546 (2d Cir. 2009) (citing *In re Adelphia Commc'ns Corp.*, 336 B.R. 610, 655 (Bankr. S.D.N.Y.), *aff'd*, 342 B.R. 122 (S.D.N.Y. 2006)).

Here, the Committee and the Petitioning Creditors assert that a Chapter 11 Trustee should be appointed for "cause" under Section 1104(a)(1), and the Committee, the Petitioning Creditors, and the UST assert that a Chapter 11 Trustee should be imposed because a Chapter 11 Trustee is

in the best interest of the creditors pursuant to Section 1104(a)(2). (*See* Docket Nos. 394, 424, 468). The Court will examine these arguments in turn.

1. <u>For Cause Pursuant to Section 1104(a)(1)</u>

As stated above, the Creditors assert that a Chapter 11 Trustee should be appointed for cause pursuant to Section 1104(a)(1) of the Bankruptcy Code. (*See* Committee Motion; PC Motion). Section 1104(a)(1) of the Bankruptcy Code provides that, upon request of a party in interest or the United States Trustee, the court shall order the appointment of a trustee "for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause . . . ." 11 U.S.C. § 1104(a)(1).

"The list of wrongs constituting 'cause' that warrants the appointment of a trustee [under Section 1104(a)(1)] is not exhaustive." *In re Ashley River Consulting, LLC*, No. 14-13406 (MG), 2015 WL 1540941, at *9 (Bankr. S.D.N.Y. Mar. 31, 2015). "Examples of non-enumerated misconduct found by courts to constitute cause include: (i) failure to comply with provisions of the Bankruptcy Code; (ii) failure to make required filings; (iii) failure to abide by Court Orders; (iv) failure to file tax returns; (v) conflicts of interest; and (vi) failure to discharge fiduciary duties." *In re Sillerman*, 605 B.R. 631, 641–42 (Bankr. S.D.N.Y. 2019) (internal citations omitted).

Importantly, "it is not necessary to delineate whether the cause consists of fraud, dishonesty, incompetence, gross mismanagement 'or similar cause.'" *In re V. Savino Oil & Heating Co., Inc.*, 99 B.R. 518, 527 (Bankr. E.D.N.Y. 1989). Indeed, any form of cause under "the penumbra of fiduciary neglect . . . mandates the appointment of a trustee." (*Id.*)

In the Committee Motion and the PC Motion, the Committee and the Petitioning Creditors assert that all enumerated forms of cause are present in these cases, in addition to certain forms of unenumerated cause. Specifically, the Committee and the Petitioning Creditors argue, *inter alia*, that: (i) the Debtors transferred the preferred shares of Eletson Gas to place them out of the reach of their creditors (Committee Motion at ¶¶ 58–65; PC Joinder at ¶¶ 27–29); (ii) the Debtors are working to deplete the estates to enrich their insiders (Committee Motion at ¶¶ 70–73); (iii) the Debtors have been dishonest with the Court (PC Joinder at ¶¶ 40–42); (iv) the Debtors are conflicted and have no independent governance (Committee Motion at ¶¶ 66–69; PC Joinder at ¶¶ 30–35); (v) the Debtors have systematically failed to disclose information to the Court and their creditors in these cases (Committee Motion at ¶¶ 74–76; PC Joinder at ¶¶ 4–10); (vi) the Debtors have mismanaged these cases by proposing a patently unconfirmable plan and seeking debtor-in-possession financing from an insider (Committee Motion at ¶ 77; PC Motion at ¶ 14); and (vii) the Debtors have failed to abide by court orders. (PC Motion at ¶¶ 9–15; PC Joinder at ¶¶ 36–39).

In the Omnibus Objection and the Shareholder Objection, the Debtors and the Majority Shareholders assert the following arguments in response: (i) not pursuing the alleged fraudulent transfers is not cause for the appointment of a Trustee (Omnibus Objection at ¶¶ 50–59; Shareholder Objection at ¶¶ 27–31); (ii) the Debtors have no conflicts of interest (Omnibus Objection at ¶¶ 60–61; Shareholder Objection at ¶¶ 32–36); (iii) the Debtors have not depleted estate resources for insiders (Omnibus Objection at ¶¶ 62–65; Shareholder Objection at ¶¶ 37–38); (iv) the Debtors are current on their financial disclosures and in compliance with all Court orders (Omnibus Objection at ¶¶ 66–67; Shareholder Objection at ¶¶ 39–41); and (v) the Debtors

have filed a confirmable plan that is in the best interest of their creditors (Omnibus Objection at ¶¶ 68–70; Shareholder Objection at ¶ 42).

In the PC Reply, the Petitioning Creditors further argue that: (i) the Debtors do not contest the PC Trustee Motion on the merits and focus on irrelevant theories (PC Reply at ¶¶ 1–6); (ii) the Debtors are conflicted (*Id.* at ¶¶ 7–15); (iii) the Debtors have refused to cooperate with their creditors in these cases (*Id.* at ¶¶ 16–18; (iv) the Debtors' administration of these cases has been grossly inadequate (*Id.* at ¶¶ 19–25); (v) the Petitioning Creditors do not trust the Debtors (*Id.* at ¶¶ 26–29); and (vi) the Majority Shareholder Objection is meritless (*Id.* at ¶¶ 30–32).

Likewise, in the Committee Reply, the Committee argues that: (i) the Debtors have actively sought to transfer value out of the estates (Committee Reply at ¶¶ 7–12); (ii) the Debtors' management is conflicted, and such conflict cannot be cured by the Demand Review Committee that the Debtors created (*id.* at ¶¶ 13–15); (iii) the Debtors continue to fail to comply with their disclosure obligations under the Bankruptcy Code (*id.* at ¶¶ 16–23); and (iv) the Debtors have willfully violated Court orders, failed to fund administrative expenses, and proposed a DIP Motion that would authorize payments from insiders (*id.* at ¶¶ 24–32).

The Court notes that the Committee and Petitioning Creditors' Arguments generally pertain to: (i) events that occurred in conjunction with the purported transfer of the Preferred Shares and the Arbitration; or (ii) the manner in which the Debtors have conducted themselves in these bankruptcy proceedings. For simplicity, and because any form of "cause" under "the penumbra of fiduciary neglect . . . mandates the appointment of a trustee," the Court will address the Committee and the Petitioning Creditors' arguments in the context of these two broad

categories, as opposed to breaking them down by form of "cause." *See V. Savino Oil & Heating Co., Inc.*, 99 B.R. at 527.

a. The Debtors' Conduct Outside of These Bankruptcy Cases

Many of the Creditors' arguments for the appointment of a Chapter 11 Trustee pertain to the Debtors' conduct outside of the bankruptcy proceedings. In this regard, the parties present diametrically opposed versions of the facts.

As succinctly stated by the Committee, the BOL "grant[ed] to Eletson Gas the option" for "Eletson Gas or its nominee to purchase" the Preferred Shares (Committee Brief at ¶ 2 (citing BOL at § 2.1)). The Arbitrator found that Eletson Gas had exercised such purchase option under the BOL by giving to Levona "the shares of the Symi and the Telendos, [two of the vessels held by Eletson Holdings' subsidiaries,]" worth "in excess of the $23 million price set forth in the BOL." (*Id.* (citing Final Award at 35)). The Committee further notes that, in a document filed in the Arbitration on October 25, 2022, Eletson Holdings and Eletson Corp. asserted that, "by virtue of the transaction contemplated in the BOL, [Eletson] Holdings had become the sole unit holder of [Eletson] Gas." (*Id.* (citing Creditor Ex. 20 at ¶ 9; Confirmation Ruling at 20–21)). Consistent with this position, on March 13, 2023, the Debtors sought stay relief from this Court and asserted that "the Arbitration does not pose even a theoretical risk to 'property of the estate.'" (Committee Brief at ¶ 2 (citing Creditor Ex. 160 at 22)). However, the Creditors note (and the Arbitrator and the District Court found) that Eletson Holdings and Eletson Corp. first argued that the Preferred Shares had actually been transferred to the Cypriot Nominees after the Court granted stay relief. (*Id.*; *see also* Confirmation Ruling at 20–21 (noting that an April 25, 2023, statement was the first time "Eletson asserted in the arbitration that the Preferred [Shares] were transferred to a nominee" and that previously "Eletson claimed that . . . [it] was the sole unit holder of the

company"); May 15 Arbitration Hearing at 153:2–24 (where the Debtors' counsel stated in the Arbitration that he urged his client to "just transfer [the Preferred Shares] to the nominees," and his clients informed him that they "ha[d] already done it"); Final Award at 30 (noting that "[i]t is undisputed that Eletson raised this contingent transfer to Cypriot [N]ominees for the first time in its Rule 20(b) submission on May 5, 2023")).

Accordingly, the Committee argues:

> The economic effect of that transfer is undisputed. The Committee introduced unrebutted testimony of Michael Cordasco that, based on information supplied by the Debtors, the purported transfer had the effect of diverting from [Eletson] Holdings to the [Cypriot] Nominees at least $125 million, representing the equity value of [Eletson] Gas.

(Committee Brief at ¶ 3 (citing Cordasco Declaration at ¶¶ 26 –27; Creditor Ex. 1 at 113:7–13 (explaining the economic effect on Eletson Holdings); *see also* PC Brief at ¶ 7 (noting that the debtors have focused on "pushing valuable property – the Preferred Shares and millions of dollars in damages – away from the estates, while telling this Court that pursuing the Arbitration is for the benefit of creditors")).

Additionally, the Creditors note that the transfer of the Preferred Shares to the Cypriot Nominees occurred at a "family meeting" (Committee Brief at ¶ 4 (citing Karastamati Deposition at 71:14–72:13)); with the same individuals standing on both sides of the transaction (*Id.* where Karastamati states that she is a director and the president of Eletson Holdings, a director of Eletson Gas, and an owner of one of the Cypriot Nominees); Karastamati Declaration at ¶ 1 (where Karastamati states that she is a secretary and director of Eletson Gas)); and for a purported purchase consideration of €3 million that was not negotiated and to date has never been paid. (*Id.* (citing Karastamati Deposition at 62:23–63–7, 65:18–22 (where Karastamati states that the transfer was not documented); *Id.* at 67:24–68:9, 67:4–11, 66:4–67:11 (where

Karastamati discusses how the purchase price was determined and states that it remains unpaid))).

The Creditors further argue that the Debtors and their principals have continued to diminish the estates during the pendency of the bankruptcy. (Committee Brief at ¶ 4; PC Brief at ¶ 7). Specifically, they assert that the Debtors have argued in the Arbitration that any damages awarded in their favor be paid to Eletson Gas and the Cypriot Nominees, not to Eletson Holdings or Eletson Corp. (Committee Brief at ¶ 5 (noting that the award is "worth as much as $89,406,326.32"); *see also* Confirmation Ruling at 71 (noting that "it was not until the pre-hearing brief, months after the [A]rbitration had commenced, that [Eletson Holdings & Eletson Corp.] asserted that the Preferred [Shares] should be transferred to the [Cypriot] Nominees and not until after the hearing and in its proposed order that [Eletson Holdings & Eletson Corp.] asked that damages be awarded to [Eletson] Gas and to the [Cypriot] Nominees and not to itself"); PC Brief at ¶ 7 (citing Confirmation Ruling at 24, 71)). The Creditors also note that, though the Arbitrator awarded attorney's fees and costs to the "claimants" (*i.e.*, both Eletson Holdings and Eletson Corp.) (Confirmation Ruling at 100), the Debtors have now requested that the District Court award those same fees—totaling nearly $10 million—solely to non-debtor Eletson Corp., even though Eletson Holdings is also a claimant. (Committee Brief at ¶ 5 (citing Creditor Ex. 123 at 22 (where Eletson Holdings and Eletson Corp. request in a proposed judgment sent to the District Court on February 23, 2024, that "Levona shall pay to Eletson Corp. . . . [a]ttorney's fees, costs, and expenses due in connection with the [A]rbitration in the amount of $9,590,222.99"))).

Finally, the Creditors argue that, though the Debtors have appointed the Demand Review Committee to investigate certain potential claims, the Demand Review Committee is not truly

independent and will not investigate claims unless a demand is made. (PC Brief at ¶¶ 15–16 (citing Creditor Ex 42 at 39; 30 at 3; 53 at 9–10)).

The Debtors have a different view. It is the Debtors' position that the Preferred Shares were never an asset of Eletson Holdings, and Eletson Holdings played no role in the nomination of the entities that received the Preferred Shares from Levona. (Debtor Brief at ¶ 29 (citing Kertsikoff Declaration at ¶ 132; Karastamati Declaration at ¶ 50). Further, the Debtors assert that the Preferred Shares "transferred directly from Levona to [the Cypriot Nominees]" rather than through Eletson Holdings. (*Id.* at ¶ 31 (citing Kertsikoff Declaration at ¶¶ 135–138; Karastamati Declaration at ¶¶ 45, 50; Hadjieleftheriadis Declaration at ¶¶ 78, 86)). The Debtors also argue that the €3 million purchase price for the Preferred Shares was reasonable. (*Id.* (citing Kertsikoff Declaration at ¶ 141; Karastamati Declaration at ¶¶ 57–58; Hadjieleftheriadis Declaration at ¶ 88); *see also* Final Award at 31 (noting that Eletson Holdings was never intended to directly or indirectly own the Preferred Shares); Confirmation Ruling at 28)). Finally, they assert that the Creditors and the Court knew that the Preferred Shares "may be transferred to a nominee," and that the Creditors had no objection to lifting the automatic stay. (*Id.* at ¶ 34 (citing Debtor Ex. 642 at 18:11–20)).

The Debtors also allege that the Creditors misunderstand the claims at issue in the Arbitration and "the nature of [the] monetary damages awarded and confirmed by the District Court." (*Id.* at ¶ 37). Specifically, the Debtors argue that the damages were expressly awarded to Eletson Gas and the Cypriot Nominees because they were the entities that were harmed by Levona's conduct. (*Id*; *see also* Final Award at 99; Confirmation Ruling at 70)). Further, they cite to the Confirmation Ruling for the proposition that "[Eletson] Holdings and [Eletson] Corp. have suffered a concrete injury in the breach of their right to have the dispute determined by the

arbitrator and have standing to vindicate their contractual right, even if the benefit of the award were to flow entirely to a third-party." (Debtor Brief at ¶ 37; *see also* Confirmation Ruling at 52)).

Finally, the Debtors argue that they have formed the Demand Review Committee to investigate potential claims arising from the transfer of the Preferred Shares to the Cypriot Nominees upon "receipt of any demand." (Kertsikoff Declaration at ¶ 49), and that, as of March 22, 2024, no demand has been made of the Demand Review Committee. (Hadjieleftheriadis Declaration at ¶ 104).

The Court finds that the Creditors have failed to establish that the Debtors' conduct outside of the bankruptcy proceedings constitutes cause under Section 1104(a)(1). First, the Court notes that the BOL expressly provided a purchase option in favor of "Eletson Gas or its nominee" to purchase the Preferred Shares from Levona. (BOL at § 2.1)). Additionally, the record indicates that the parties in these proceedings were aware of this language at the time that the Court approved the Stay Relief Stipulation at the April 17, 2023, hearing. (Debtor Ex. 642 at 18:11–20 (where counsel for the Committee states that the Stay Relief Stipulation "looks fine to us. I would say we were happy to see that there is a stay for enforcement of the judgment. We did have some concerns with transfers. There were some statements in the motion that was filed by the [Debtors] here that some of these assets may be transferred to a nominee.")).

The Court further notes that the issue before the Arbitrator and the District Court pertains to whether the purchase option contained within the BOL was properly exercised. (Final Award at 9 (noting that the question presented is whether "Eletson exercise[d] the purchase option pursuant to the [BOL]?")). However, the effect of the purported transfer of the Preferred Shares as it relates to these Debtors' estates (for instance, whether a potential preference, fraudulent

transfer, or other claim may exist) remains a live issue in these cases. (Confirmation Ruling at 89 (noting that "it is in [the Bankruptcy Court], in the first instance, that the Court can address the timing of the election by Eletson that the Preferred [Shares] should go to the [Cypriot Nominees] and whether the Preferred [Shares] should be considered to be property of the estate or should be clawed back or avoided"); *see also* Docket No. 348 (the "**Stay Relief Modification Opinion**") at 11 (where this Court noted in its January 4, 2024 Memorandum Opinion and Order that "if, as the Committee asserts, causes of action exist relating to findings made in the Arbitration, the Court is unaware of any impediment . . . to such causes of action being asserted in these proceedings by the appropriate party, at the appropriate time")).

Indeed, the Court notes that the Debtors established the Demand Review Committee for the express purpose of providing a means by which potential claims stemming from the transfer of the Preferred Shares to the Cypriot Nominees could be investigated. (Kertsikoff Declaration at ¶ 49). As of March 22, 2024, no demand had been made of the Demand Review Committee. (Hadjieleftheriadis Declaration at ¶ 104). Though the Creditors assert that the Demand Review Committee is not independent (PC Brief at ¶¶ 15–16 (citing Creditor Ex 42 at 39; 30 at 3; 53 at 9–10), such alleged lack of independence does not explain why the Creditors have failed to make a demand and/or to pursue these alleged claims by other means, such as by seeking derivative standing to assert them.

The Committee analogizes these cases to *Sillerman* and *Savino Oil*. (Committee Brief at ¶¶ 11–13). However, the Court finds both of those cases distinguishable. In *Savino Oil*, the debtor formed a new corporate entity and proceeded to transfer its most valuable assets to the newly formed entity before placing the original entity into bankruptcy. *In re Savino Oil and Heating Co., Inc.*, 99 B.R. 518, 523–24 (Bankr. E.D.N.Y 1989). Upon filing bankruptcy, the

owners did not disclose the existence of the new corporation or that the transfer had occurred. *Id.* at 526. The court found that such conduct "in and of itself" constitutes cause. *Id.*

As stated above, in these cases, it was well-known that the BOL contained a clause "grant[ing] to Eletson Gas the option" for "Eletson Gas *or its nominee* to purchase" the Preferred Shares. (BOL at § 2.1 (emphasis added)). Though the Court recognizes (as did the Arbitrator and the District Court) that the Debtors did not raise the fact that the transfer had occurred until after the Stay Relief Stipulation was granted, the Court notes that the Arbitrator found the Debtors' explanation credible. (Final Award at 30–32 (where the Arbitrator found that Eletson Holdings and Eletson Corp. credibly explained that they did not raise the transfer earlier because they did not think it was relevant to the Arbitration until Levona "made clear in the [Eletson] Holdings bankruptcy that they would attempt to use the bankruptcy proceedings as an end-run around any adverse award in this arbitration by claiming that the [P]referred [S]hares were part of the bankruptcy estate of [Eletson] Holdings"); Confirmation Ruling at 22–23 (noting that the Arbitrator "acknowledged that the lack of earlier written notice to Levona of the contingent transfer of the Preferred [Shares] to the [Cypriot] Nominees had initially 'raised concern,' but concluded that there was no 'bad faith or misconduct' in the failure to give notice.")). Thus, unlike *Savino,* it has not been established that the Debtors intentionally failed to disclose the transfer to the Cypriot Nominees.

The Court likewise finds *Sillerman* distinguishable. In *Sillerman,* the court found that a Chapter 11 Trustee should be appointed in part because the debtor had refused to pursue avoidance actions against family members. *In re Sillerman,* 605 B.R. 631, 646–47 (Bankr. S.D.N.Y. 2019). Critically, in *Sillerman,* the court found that the debtor had made numerous *post-petition* unauthorized transfers—including selling two golf memberships worth more than

$500,000 each—without disclosing what he did with the proceeds of such sales. *Id.* at 649 (emphasis added).

Here, 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. (Final Award at 96; Confirmation Ruling at 31). Moreover, as discussed above, the BOL expressly provided the Debtors the ability to designate nominees, and the Creditors recognized this at the time that the Court entered the Stay Relief Stipulation. (BOL at § 2.1; Debtor Ex. 642 at 18:11–20).

To be clear, the Court notes that certain of the Debtors' conduct in the Arbitration is potentially problematic. Specifically, though Debtor Eletson Holdings is a party to the Arbitration, Eletson Holdings and Eletson Corp. argued—while represented by the same counsel who is representing the Debtors in these cases—that Eletson Holdings should not receive any portion of the damages or attorney's fees assessed against Levona. (Confirmation Ruling at 71 (noting that "it was not until . . . after the hearing and in its proposed order that [Eletson Holdings & Eletson Corp.] asked that damages be awarded to [Eletson] Gas and to the [Cypriot] Nominees and not to [themselves]"); Creditor Ex. 123 at 22 (requesting in a proposed judgment sent to the District Court that "Levona shall pay to Eletson Corp. . . . [a]ttorney's fees, costs, and expenses due in connection with the [A]rbitration in the amount of $9,590,222.99"))). However, as the District Court noted:

> The [A]rbitrator concluded that [Levona] wrongfully denied the [Cypriot] Nominees the Preferred [Shares] to which they were entitled and that, by depriving them of the Preferred [Shares] while retaining the two vessels, Levona was unjustly enriched at the [Cypriot] Nominees' expense. The [A]rbitrator reasoned that the damages "flow[ed] directly from Levona's refusal to relinquish the [P]referred [Shares], and the [Cypriot] Nominees hold all title and interest in the [P]referred [Shares]." Dkt. No. 47-5 at 64. The [A]rbitrator had the authority to hold that the Preferred [Shares] were transferred to the [Cypriot] Nominees and award the

> [Cypriot] Nominees damages. The Court need not agree with that reasoning to conclude that it was within the arbitrator's power to determine that Levona's breach of its obligations to [Eletson Holdings and Eletson Corp.] could be most readily and effectively redressed by giving the party most directly injured the benefit the [A]rbitrator found that [Levona] unjustly enjoyed. As to [Eletson Gas], the [A]rbitrator determined that they too were directly injured by the conduct that the [A]rbitrator found violated the LLCA—Levona caused the arrests of [Eletson Gas'] vessels and committed other breaches of contract. If it was within the power of the [A]rbitrator to determine whether Levona breached the LLCA, it follows that it would be within the power of the [A]rbitrator to grant the relief that the [A]rbitrator believed was most effective to redress that breach.

(Confirmation Ruling at 70–71). The Court likewise notes that Eletson Holdings and Eletson Corp. requested that the award of attorney's fees be paid solely to Eletson Corp. because Eletson Corp. is the sole party paying for the Arbitration. (*See* Confirmation Ruling at 111 n.32 (noting that "the arbitrator did not award fees and costs to third parties but rather to Eletson '*to be paid to the entity or individuals who paid those costs and fees*'" (emphasis in original)). Based on this reasoning, the Court finds *Sillerman* distinguishable.

In addition, the Court finds that any potential harm to the Debtors' estates is somewhat ameliorated by the terms of the Stay Relief Stipulation, which requires the Arbitration Parties to abstain from executing on the Final Award absent further order of this Court. (Docket No. 48 at ¶ 4 ("Any Arbitration Award, whether in favor of any Arbitration Party, shall be stayed pending further order of the Bankruptcy Court on a motion noticed following the issuance of the Arbitration Award. For avoidance of doubt, no Arbitration Party shall transfer, dispose of, transact in, hypothecate, encumber, impair or otherwise use any such Arbitration Award or any asset or property related thereto absent a further order of this Court.")).

Indeed, at the Hearings in this matter, the Court asked counsel for the Debtors what will happen to the judgment related to the Arbitration if it is paid by Levona. (April 11 Transcript at

81:6–7 ("So once the award is final, it will be brought back here before any payment is made to anyone?"). In response, Counsel for the Debtors stated:

> [i]f Murchinson pays us the award, . . . [it's] going nowhere other than into an escrow account controlled by Your Honor. It is not going to be used for any purpose. There's going to be a lot of information before they ever do that. Your Honor is going to be kept [apprised], we're going to then be accused of writing too many letters, but we have been doing that, and we're going to continue to do that. And there cannot be the slightest doubt of that.

(*Id.* at 81:12–20). Finally, as stated above, the Court notes that the Creditors have made no demand upon the Demand Review Committee, nor have they sought derivative standing to pursue potential claims stemming from the alleged transfer of the Preferred Shares to the Cypriot Nominess. (Hadjieleftheriadis Declaration at ¶ 104).

For these reasons, the Court finds that the Creditors have failed to establish cause by clear and convincing evidence with respect to the Debtors' conduct outside these bankruptcy proceedings.

b. <u>The Debtors' Conduct in These Bankruptcy Cases</u>

The Creditors also assert that certain of the Debtors' conduct in this bankruptcy case warrants the appointment of a Chapter 11 Trustee for cause under Section 1104(a)(1) of the Code. A primary argument raised by the Creditors is that the Debtors have not diligently carried out their reporting obligations under the Bankruptcy Code. Specifically, the Creditors assert, *inter alia*, that the Debtors: (i) failed to timely comply with their disclosure obligations under Rule 2015.3 for their most valuable affiliate, Eletson Gas, and otherwise failed to disclose intercompany balances in their other 2015.3 reports (Committee Brief at ¶ 7 (citing Creditor Ex. 91 (where the U.S. Trustee explains in a response to the Debtors' initial 2015.3 Reports that there is no excuse not to file a 2015.3 Report for Eletson Gas); Cordasco Declaration at ¶ 30); PC Brief at ¶ 20)); (ii) failed to appear at two 341 meetings and only appeared following the UST's

threat to appoint a Chapter 11 Trustee (Committee Brief at ¶ 7 (citing Creditor Ex. 86 at 3:13–16)); (iii) refused to produce any Rule 2004 discovery pursuant to the Committee's requests for more than a month because they asserted that they would not produce documents from any non-Debtor affiliates (Committee Brief at ¶ 7 (citing Creditor Ex. 17 at 33:17–20; Creditor Ex. 18 at 37:16–21); PC Brief at ¶ 21)); and (iv) only produced summary-level trial balances and not general ledgers (Committee Brief at ¶ 7 (citing Creditor Ex. 168 at 36:4–11; Creditor Ex. 66; Creditor Ex. 67; Cordasco Declaration at ¶ 12)).

The Creditors further argue that the Debtors' failure to fund these cases also warrants the appointment of a Chapter 11 Trustee. Specifically, the Creditors argue that the Debtors: (i) breached the Interim Compensation order by failing to pay unobjected-to fees for more than a month (Committee Brief at ¶ 9 (Creditor Ex. 26, 27, 29); PC Brief at ¶ 21 (citing Docket No. 458 at ¶ 7; Creditor Ex. 27 at 2)); (ii) sought approval of the DIP Motion, which would be insufficient to cover existing administrative expenses (Committee Brief at ¶ 9 (citing Cordasco Declaration at ¶¶ 16–17); PC Brief at ¶ 13 (citing Docket Nos. 265, 322, 324)); and (iii) asserted that the DIP Motion was necessary because the Debtors could not force their subsidiaries to make a dividend to the Debtors to pay administrative expenses, although the Debtors later compelled the exact dividends they previously claimed were impossible. (PC Brief at ¶ 13 (citing Creditor Ex. 26–29)).

The Creditors also state that the following additional conduct in these cases warrants a Chapter 11 Trustee: (i) the Debtors did not file any first day motions (PC Brief at ¶ 13); (ii) the Debtors failed to hire bankers or financial advisors to assist in obtaining financing or in making financial disclosures (*id.*); (iii) the Debtors generally have failed to engage with their creditors (*id.*); (iv) the Debtors filed a new value plan that was not market tested (*id.*); (v) the Debtors

allowed their exclusivity period to lapse (*id.*); (vi) the Debtors failed to pay quarterly UST fees (*id.* at ¶ 13 (citing Docket No. 508 at 15; Docket No. 509 at 15; Docket No. 510 at 15)); (vii) the Debtors made payments to their counsel post-petition before such counsel was retained (*id.* (citing Docket No. 385 at ¶¶ 4, 6; Docket No. 350)); (viii) the Debtors engaged professionals without Court approval (*id.*); and (ix) the Debtors have violated numerous Court orders. (*Id.*)

In response, the Debtors and the Shareholders assert that they proposed their plan in good faith. (Debtor Brief at ¶ 40 (citing Kertsikoff Declaration at ¶¶ 68–72; Debtor Ex. 667; Docket No. 570)). Further, they assert that the time entries in the Committee's fee statements indicated that the Committee never intended to take the Debtors' plan seriously, as the Creditors were already preparing their Chapter 11 Trustee Motion weeks before the Debtors even filed their plan. (Id. (citing Debtor Ex. 684 at 24–29)).

Regarding the Creditors' argument that the Debtors failed to fund these cases, the Debtors argue that they "actively explored all sources to obtain (and have obtained) funds to address administrative expenses, including attempting to secure funding from historical lenders." (*Id.* at ¶ 50 (citing Kertsikoff Declaration at ¶ 57)). The Debtors further assert that, when it became clear that they would be unable to secure outside financing, "they sought financing from an indirect subsidiary which proposed terms to obtain immediate financing" in the amount of $4.4 million. (*Id.* (citing Kertsikoff Declaration at ¶¶ 57–59; Debtor Ex. 671; Debtor Ex. 672; Debtor Ex. 684; Debtor Ex. 696)). Ultimately, the Debtors secured the consent of their lenders to permit certain of their subsidiaries to issue a dividend to Eletson Holdings to fund these cases. (*Id.* (citing Kertsikoff Declaration at ¶ 58; Debtor Ex. 756 at § 73(k))).

The Debtors also assert that they are currently taking actions to maximize distributions to creditors by seeking to reduce the administrative expenses in these cases (*Id.* at ¶ 51 (citing

Kertsikoff Declaration at ¶ 50), and also by exploring opportunities to monetize their assets by selling some of their subsidiaries. (*Id.* (citing Kertsikof Declaration at ¶¶ 60–67)).

Regarding the Debtors' reporting obligations, the Debtors assert that they timely filed their schedules and statements of financial affairs, provided additional information as requested, and are current on their monthly operating reports and Bankruptcy Rule 2015.3 Reports. (Debtor Brief at ¶ 52 (citing Karastamati Declaration at ¶¶ 27–31 (additional citations omitted)); Shareholder Brief at ¶ 17 (citing Karastamati Declaration at ¶ 31))). The Shareholders add that the Debtors have worked hard to comply with their reporting obligations despite the serious concerns they have about sharing confidential information due to the alleged past misuse of the information by the Murchinson entities (Shareholder Brief at ¶ 17 (citing Karastamati Declaration at ¶ 27)).

The Court finds that the Creditors have failed to establish cause by clear and convincing evidence warranting the appointment of a Chapter 11 Trustee with respect to the Debtors conduct in these cases. Preliminarily, with regard to the Debtors' purported lack of disclosure in these cases, the Court agrees with the Debtors that they timely filed their schedules and have generally complied with their mandatory reporting requirements under the Bankruptcy Code by filing operating reports and 2015.3 Reports. (*See* Debtor Brief at ¶ 52 (citing Karastamati Declaration at ¶¶ 27–31 (additional citations omitted))). Indeed, though the Debtors initially filed late and incomplete 2015.3 Reports (Committee Brief at ¶ 7 (citing Creditor Ex. 91; Cordasco Declaration at ¶ 30); PC Brief at ¶ 20)), the Court notes that the Debtors subsequently timely provided 2015.3 Reports for all their subsidiaries.

The Court is equally unpersuaded by the Creditors' arguments pertaining to the Debtors' disclosures in discovery. Though there have been a number of discovery disputes in these cases,

the Court is cognizant of the fact these cases began as hotly-contested involuntary Chapter 7 cases, which in part may explain the Debtors' initial hesitancy to exchange information. (Shareholder Brief at ¶ 17 (citing Karastamati Declaration at ¶ 27)). In any event, the Court is not aware of any case that stands for the proposition that a bankruptcy court should appoint a Chapter 11 Trustee for cause because of standard, legitimate discovery disputes.

The Court also does not believe that the Creditors have met their burden of establishing cause by clear and convincing evidence regarding the Debtors' failure to timely fund these cases. The Creditors seem to place a great emphasis on the fact that the Debtors should have known that they would need DIP financing to timely comply with the Interim Compensation Order. (Committee Brief at ¶ 9 (Creditor Ex. 26, 27, 29); PC Brief at ¶ 21 (citing Docket No. 458 at ¶ 7; Creditor Ex. 27 at 2)). Though the Court agrees with the Creditors to some extent, the Court also notes that the Debtors have subsequently made timely payments under the Interim Compensation Order—which was entered on February 7, 2024—each month. (Debtor Brief at ¶ 50 (citing Kertsikoff Declaration at ¶ 58). Accordingly, the Court finds that this argument is somewhat moot. For similar reasons, the Court also finds that the Creditors' arguments pertaining to the DIP Motion itself do not support a finding of cause by clear and convincing evidence. Indeed, as the Creditors themselves point out, the Debtors ultimately began paying administrative expenses in these cases without DIP financing. (PC Brief at ¶ 13 (citing Creditor Ex. 26–29)).

Additionally, the Creditors' arguments pertaining to the Debtors' plan also do not support the imposition of a Chapter 11 Trustee. For instance, the Creditors argue that the Debtors filed a patently unconfirmable "new value plan" that was not market tested.[13] (PC Brief at ¶ 13).

[13] A "new value plan" is a Chapter 11 plan "under which the objection of an impaired senior class does not bar junior claim holders from receiving or retaining property interests in the debtor after reorganization, if they contribute new capital in money or money's worth, reasonably equivalent to the property's value, and necessary for

Simultaneously, the Creditors argue that cause exists to appoint a Chapter 11 Trustee because the Debtors purposefully allowed the exclusivity period to lapse so that their plan could be market tested through a competing plan process. (PC Brief at ¶ 13). However, as the Supreme Court has held, one of the methods for potentially confirming a "new value plan" is through the competing plan process. *203 N. LaSalle*, 526 U.S. at 454. The Court further notes that the Debtors' choice to permit competing plans by allowing exclusivity to lapse has already yielded multiple amended plans that invariably will increase creditor recovery in these cases. (*See e.g.* Docket Nos. 370, 531, 570, 663, 671, 695).

The Court also finds that the Creditors' remaining arguments pertaining to the lack of first day motions and failure to hire their own bankers or financial advisors also do not constitute cause. (*See* PC Brief at ¶ 13). The Court is unaware of any cases standing for the proposition that cause exists to appoint a Chapter 11 Trustee for these failures, although they could present other issues in these cases going forward.

Finally, in the PC Motion, the Petitioning Creditors analogize the Debtors' conduct in these cases to other cases in which a Chapter 11 Trustee was appointed for cause for failure to abide by Court orders. (*See* PC Motion at ¶ 13). However, the Court finds those cases distinguishable. *See e.g. In re AG Serv. Centers, L.C.,* 239 B.R. 545, 551 (Bankr. W.D. Mo. 1999) (where, unlike here, the court found that the debtor's "failure to [comply with the cash collateral order] can only be attributed to his deliberate choice to ignore the Court's orders and proceed in any fashion he pleases, i.e., setting his own deadlines, repeatedly ignoring the budget he proposed himself, and basically carrying on business as if he had never filed bankruptcy");

successful reorganization of the restructured enterprise." *Bank of Am. Nat. Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship ("203 N. LaSalle")*, 526 U.S. 434, 434–35 (1999).

Morningstar Marketplace, Ltd, 544 B.R. 297, 304 (Bankr. M.D. Pa. 2016) (where the court found that cause did not exist at all and appointed a trustee for entirely different reasons); *In re TP, Inc.*, 455 B.R. 455, 459 (Bankr. E.D.N.C. 2011) (where, among other things, the debtor directed its counsel to refuse to comply with an order to turnover funds required by a consent order); *In re Westbank Holdings, LLC*, No. 22-10082, 2022 WL 3052135, at *14 (Bankr. E.D. La. Aug. 1, 2022) (appointing trustee in part because the debtor "surreptitiously caused a total of $800,000 in insurance proceeds that were to be used to repair hurricane damage to properties held by the Debtors to vanish in the wind without one receipt, cancelled check, or other primary-source support to show that the proceeds were spent on repairs to the properties"); *In re Woodlawn Cmt'y Dev. Corp.*, 613 B.R. 671, 685 (N.D. Ill. 2020) (affirming appointment of a trustee and stating that "defying a court order—such as paying . . . a consulting fee that the bankruptcy judge explicitly forbade—is cause to appoint a trustee"); *In re NOA, LLC*, 578 B.R. 534, 540 (Bankr. E.D.N.C. 2017) (appointing a trustee where the debtor violated a stipulated order with its creditors that specifically restrained the debtor from shipping bulk clothing out of the United States until full payment for the goods was received)).

Having considered all of these arguments together, the Court finds that the Creditors have failed to establish that cause exists to appoint a Chapter 11 Trustee pursuant to Section 1104(a)(1) through clear and convincing evidence.

2. <u>Best Interest of the Creditors Pursuant to Section 1104(a)(2)</u>

As set forth above, the Movants also assert in their respective motions that a Chapter 11 Trustee should be appointed pursuant to Section 1104(a)(2) because such an appointment is in the best interest of creditors. Section 1104(a)(2) of the Bankruptcy Code provides that, upon request of a party in interest or the United States Trustee, the court shall order the appointment of

a trustee "if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate . . . ." 11 U.S.C. § 1104(a)(2).

Courts analyzing whether the appointment of a Chapter 11 Trustee is in the best interest of creditors have examined numerous factors, including: "(a) the trustworthiness of the debtor; (b) the debtor's past and present performance and prospects for rehabilitation; (c) the confidence—or lack thereof—of the business community and of creditors in present management; and (d) the benefits derived from the appointment of a trustee, balanced against the cost of the appointment." *In re Sillerman*, 605 B.R. 631, 652 (Bankr. S.D.N.Y. 2019).

Importantly, "Section 1104(a)(2) envisions a flexible standard and gives the district court discretion to appoint a trustee when doing so would serve the parties' and estate's interests." *In re The 1031 Tax Grp., LLC*, 374 B.R. 78, 90 (Bankr. S.D.N.Y. 2007) (internal quotations and citations omitted). Ultimately, "the decision to appoint a trustee rests in the [C]ourt's discretion," and the Court's discretion is broad. *In re China Fishery Grp. Ltd. (Cayman)*, No. 16-11895 (JLG), 2016 WL 6875903, at *14 (Bankr. S.D.N.Y. Oct. 28, 2016); *In re Wings Digital Corp.*, No. 05-12117 (ALG), 2005 WL 3789334, at *4 (Bankr. S.D.N.Y. May 16, 2005).

The Movants collectively make the following arguments regarding appointment of a Chapter 11 Trustee under Section 1104(a)(2): (i) the Debtors suffer from a lack of trustworthiness (Committee Motion at ¶ 79; UST Trustee Motion at 8–11; PC Joinder at ¶¶ 18–26); (ii) the Debtors lack any prospects of reorganization without a Trustee (Committee Motion at ¶ 80; UST Trustee Motion at 11; PC Brief at ¶¶ 24–25); (iii) the creditors have no confidence in the Debtors' ability to administer these estates and that acrimony has crippled progress (Committee Motion at ¶¶ 81–82; UST Trustee Motion at 11–12; PC Joinder at ¶¶ 1–3); and (iv)

the benefits of a Chapter 11 Trustee outweigh the costs (Committee Motion at ¶ 84; UST Trustee Motion at 12; PC Brief at ¶¶ 29–36).

In the Omnibus Objection, the UST Objection, and the Shareholder Objection, the Debtors and the Majority Shareholders assert in response that: (i) they are trustworthy and have faithfully administered these estates (Omnibus Objection at ¶ 74; UST Objection at 12–13; Shareholder Objection at ¶ 48); (ii) the Debtors have a realistic chance of reorganizing because they have proposed a plan that is confirmable (Omnibus Objection at ¶ 75; UST Objection at 14–16; Shareholder Objection at ¶¶ 49–51); (iii) the animosity in these cases has not risen to the level sufficient to impose a Trustee and that they have the confidence of their other creditors (Omnibus Objection at ¶¶ 76–79; UST Objection at 17–20); and (iv) appointment of a Chapter 11 Trustee would be bad for the Debtors' enterprise value (Omnibus Objection at ¶¶ 80–83; UST Objection at 21–25; Shareholder Objection at ¶¶ 52–53).

In the Replies, the Movants assert that: (i) the creditors have no confidence in the Debtors and the level of acrimony in these cases is atypical. (Committee Reply at ¶¶ 33, 35; UST Reply at 3–8); (ii) these cases are not a two-party dispute between the Debtors and the Murchinson affiliated entities (Committee Reply at ¶ 34); (iii) the creditors do not trust the Debtors (PC Reply at ¶¶ 26–29); (iv) the Court should reject the Debtors' assertion that the estates would be damaged by the appointment of a trustee (Committee Reply at ¶ 36); and (v) the impact to non-debtor subsidiaries does not figure in the cost-benefit analysis regarding whether to appoint a Trustee. (UST Reply at 8–11).

The Court will address these issues in turn.

a. The Debtors' Trustworthiness

The first factor courts consider in determining whether to appoint a Chapter 11 Trustee under Section 1104(a)(2) is the debtor's trustworthiness. Regarding this factor, the Petitioning Creditors generally reassert many of their arguments under Section 1104(a)(1), particularly:

> (1) the Debtors' abandonment of the Second RSA and failure to pay on the Notes, (2) their favoritism toward shareholders in their Plan and DIP, (3) their focus on pushing property away from creditors through the Arbitration, (4) their response to creditor concerns about the Cypriot Transfer by forming a Demand Review Committee represented by conflicted counsel and headed by a director who is not independent, (5) their refusal to engage with any creditors during the 120-day period, as well as (6) their lack of transparency regarding the financials of their subsidiaries . . . .

(PC Brief at ¶ 23; *see also* Committee Motion at ¶ 79 (asserting that the Debtors are untrustworthy because of their lack of independent governance, failure to make timely and accurate disclosures, and failure to provide information to the Committee and its advisors)).[14]

Though the Debtors and the Shareholders do not separately address this factor, the Court notes that many of these arguments were raised by the Creditors in the context of their arguments under Section 1104(a)(1) of the Bankruptcy Code and rejected by the Court. Specifically, those arguments relating to: (i) the Debtors' arguments in the Arbitration that the Preferred Shares were transferred to the Cypriot Nominees; (ii) the formation of the allegedly conflicted Demand Review Committee and the Debtors' lack of independent governance; and (iii) the Debtors' lack of financial transparency regarding their subsidiaries. (PC Brief at ¶ 23; Committee Motion at ¶ 79). Accordingly, the Court rejects these arguments for the same reasons set forth *infra*, section III.B.

[14] The UST Motion raises acrimony as an argument regarding the Debtors' trustworthiness. (UST Motion at 8–11). However, the Court finds that this argument is relevant to the third factor, whether there is creditor confidence in the Debtors. Accordingly, the Court will address this argument *supra*, section III.B.2.c.

The Court is also unpersuaded by the Movants' remaining arguments. First, the Court disagrees that the Debtors' pre-petition default under the RSA and failure to pay the notes make the Debtors untrustworthy within the meaning of Section 1104(a)(2) of the Bankruptcy Code. Indeed, many bankruptcies are precipitated by some degree of such financial distress.

The Court also disagrees with the Movants that the Debtors' new value plan and DIP proposal makes the Debtors untrustworthy. First, with regard to the plan, the Court notes that "new value plans" can potentially be an acceptable means of reorganization so long as, for instance, they are market tested, as the Debtors propose here through the competing plan process. *203 N. LaSalle*, 526 U.S. at 454.

Likewise, with regard to the DIP proposal, though the DIP Motion sought approval of a senior-secured loan facility to be provided by one of the Debtors' subsidiaries, the Court finds that the Debtors' explanation for the proposal is credible. (DIP Motion at ¶ 9 (stating that "[t]he Debtors do not believe they can force a dividend from their subsidiaries under applicable nonbankruptcy law (including the organizational arrangements) and certain contractual obligations binding the subsidiaries")). In any event, the DIP Motion has so far proven to be unnecessary, as the Debtors' subsidiaries were able to obtain consent to make dividends to Eletson Holdings to fund these cases. (Creditor Ex. 26–29).

Finally, with regard to the argument that the Debtors have refused to engage with their creditors in these cases, the Court agrees with the Movants to a degree, but does not find that the Debtors' lack of engagement warrants the imposition of a Chapter 11 Trustee at this time. Indeed, the Court acknowledges that the Debtors have been reluctant at times to share information with the creditor body in these cases. For instance, the Debtors initially did not file timely 2015.3 Reports for any of their subsidiaries, and when they did file them, they excluded

Eletson Gas. (Committee Motion at ¶ 25–26). Additionally, as discussed above, the Court has regularly been required to resolve many discovery disputes throughout these cases, many of which are detailed in the letters filed on the docket. (Docket Nos. 402; 403; 407; 414; 415; 416; 423; 437; 439; 441; 443; 446; 447; 448; 451; 452; 453; 460; 463; 466; 470; 471; 472; 483; 490; 528).

Ultimately, however, the Court notes that the Debtors have largely complied with discovery requests in these cases after receiving direction from the Court and the Court is unaware of any required bankruptcy disclosures that remain outstanding. Moreover, the Court finds that, to a certain extent, the Debtors' initial reluctance to timely share information with their full creditor constituency is at least in part explained by certain findings made in the Arbitration. (*See e.g.*, Final Award at 50–52, 56, 62, 69 (where the Arbitrator found, *inter alia*: (i) that Murchinson bribed an officer of Eletson Corporation and Eletson Gas to act against Eletson Gas' interests; (ii) breached an NDA by communicating directly with Eletson Gas financiers and lenders; (iii) intentionally violated injunctions entered in the Arbitration; (iv) manipulated the evidentiary record in the arbitration; and (v) refused to produce relevant documents in the Arbitration)).

To be clear, bad behavior by the Debtors' creditors in other forums does not excuse the Debtors' compliance with the provisions of the Bankruptcy Code, or their obligations to comply with reasonable discovery requests in these proceedings. However, for the purposes of establishing the Debtors' lack of trustworthiness, the Court finds the Debtors' behavior does not establish cause by clear and convincing evidence for the appointment of a Chapter 11 Trustee. For all these reasons, the Court finds that this factor does not weigh in favor of the imposition of a Chapter 11 Trustee.

b. The Debtors' Past and Present Performance and Prospects for Rehabilitation

The second factor courts consider in determining whether to appoint a Chapter 11 Trustee under Section 1104(a)(2) is the Debtors' past and present performance and their prospects for rehabilitation. Regarding this factor, the Petitioning Creditors raise three facts: (i) the Debtors never made any payments on the Exchange Notes which allowed millions of dollars in interest to accrue (PC Brief at ¶ 24 (citing Creditor Ex. 36)); (ii) "they went from over 20 vessels to 4 vessels during the last five years due to their mismanagement" (PC Brief at ¶ 24 (citing Creditor Ex. 32 at 54; Docket no. 340 at 9–10); and (iii) the Families, who run Eletson Holdings, and who are also in charge of Eletson Gas have sought to push the Eletson Gas Preferred Shares out of the estate and are using estate resources to accomplish that goal. (PC Brief at ¶ 24 (citing Creditor Ex. 1 at 113:5–116:21; May 15 Arbitration Hearing at 153:2–13; Creditor Ex. 20 ¶ 9; Creditor Ex. 160 at 4)).

As for the Debtors' prospect for reorganization, the Petitioning Creditors state that the Debtors' plan "seek[s] to subordinate the entire creditor body to out-of-the-money shareholders in violation of the absolute priority rule. (PC Brief at ¶ 25; *see also* UST Motion at 11). Likewise, the Committee argues that reorganization seems unlikely because the Debtors breached both RSA's pre-bankruptcy and have not effectively progressed these cases. (Committee Motion at ¶ 80).

In response, the Debtors offered the testimony of Nikolaos Veraros as an expert in the shipping finance industry. (Debtor Brief at ¶ 12). Mr. Veraros analyzed the Debtors' operations, including charter and bareboat charter agreements, employment tables, industry information, and financial statements, and found that "current management is managing skillfully and successfully the relationships . . . with most of its creditors, [] to maximize the possibility for survival of the

assets to the ultimate benefit of all stakeholders." (Veraros Declaration at ¶¶ 15–37). Moreover, the Debtors point out that they have historically been successful in preserving and monetizing the value of their subsidiaries, including by successfully selling 13 of their vessels for the benefit of their noteholders as part of the Second RSA. (Debtor Brief at ¶ 46 (citing Kertsikoff Declaration at ¶ 25; Hadjieleftheriadis Declaration at ¶¶ 50–51)). The Debtors assert that these sales resulted in more than $137 million of value being transferred to noteholders over a two-year period. (*Id.* (citing Kertsikoff Declaration at ¶ 25; Hadjieleftheriadis Declaration at ¶¶ 50–51)). Finally, the Debtors assert that they have proposed a confirmable plan in good faith. (Debtor Brief at ¶ 40 (citing Kertsikoff Declaration at ¶¶ 68–72; Debtor Ex. 667; Docket No. 570)).

Regarding this factor, the Court finds that the Movants have failed to meet their burden that a Chapter 11 Trustee is warranted due to poor performance and lack of rehabilitation. Indeed, when asked at the Hearings in this matter whether the underlying business was being run poorly, counsel for the Committee stated that he believed it was a management issue, not an issue at the subsidiary level. (*See* April 11 Hearing Transcript at 20:5–22). However, the record does not support a finding at this time that the Debtors are poorly managing their business.

For instance, the Debtors produced uncontested testimony showing that the Debtors have historically been successful at monetizing their enterprise for the benefit of creditors. (Debtor Brief at ¶ 46 (citing Kertsikoff Declaration at ¶ 25; Hadjieleftheriadis Declaration at ¶¶ 50–51)). Further, as Mr. Veraros testified (again, unopposed), "current management is managing skillfully and successfully the relationships . . . with most of [their] creditors, [] to maximize the possibility for survival of the assets to the ultimate benefit of all stakeholders." (Veraros Declaration at ¶¶ 15–37).

The Court is equally unconvinced by the Creditors' arguments that pre-petition defaults constitute poor management sufficient to appoint a Chapter 11. (PC Brief at ¶ 24 (citing Creditor Ex. 36; Creditor Ex. 32 at 54; Docket No. 340 at 9–10)). Indeed, as stated above, many bankruptcies are precipitated by some degree of such financial distress. The Court likewise does not believe that the Debtors are being run poorly for many of the same reasons outlined extensively in the context of the Movants' 1104(a)(1) arguments. (*See supra*, section III.B).

Regarding the Debtors' prospect for reorganization, the Court further notes that the Debtors have attempted to prevent the loss of the Preferred Shares to Levona in the arbitration and have filed Chapter 11 plans. (*See* Debtors' First Plan; Debtors' Second Amended Plan). While the Movants point out that the Debtors' plans are new value plans that "seek to subordinate the entire creditor body to out-of-the-money shareholders in violation of the absolute priority rule," (PC Brief at ¶ 25; *see also* UST Motion at 11), the Court notes that new value plans can be an acceptable means of reorganization so long as, for instance, they are market tested, as is potentially contemplated here through the competing plan process. *Bank of Am. Nat. Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 454 (1999).

For these reasons, the Court finds that the Debtors' past and present performance and their prospects for rehabilitation do not weigh in favor of appointing a Chapter 11 Trustee.

c. <u>Creditor Confidence in Present Management</u>

The third factor courts consider in determining whether to appoint a Chapter 11 Trustee under Section 1104(a)(2) is creditor confidence in present management. The Movants argue that this factor is met due to overwhelming creditor support of the Trustee Motions (PC Brief at ¶ 26 (citing Docket Nos. 404, 420, 476, 491); Committee Brief at ¶ 14 (citing Creditor Ex. 117, 119, 135; Debtor Ex. 691); UST Brief at 9)).

Further, all of the Movants argue that the acrimony in these cases constitutes cause to appoint a trustee. (PC Brief at ¶ 27 (citing Creditor Ex. 18 at 13:24–14:5 (where Debtors' counsel states that this is an "incredibly acrimonious case"); Docket No. 236 at ¶¶ 11, 13 (where the Debtors state that these cases is part of "improper collection litigations commenced by Murchinson and its alter egos")); Committee Brief at ¶ 14; UST Brief at 4–8)). The Petitioning Creditors also assert that the Debtors: (i) have objected to virtually every application submitted by the Committee in these cases (PC Brief at ¶ 27 (citing Docket Nos. 287, 356–57, 376–79, 380, 431–32, 464–65, 563-64)); and (ii) refuse to engage with their creditors in these cases and proposed a patently unconfirmable plan. (PC Brief at ¶ 27).

In response, the Debtors generally assert that these cases are essentially two-party disputes and that the "alleged acrimony and 'creditor' consensus in these cases are smokescreens" because in actuality "Murchinson is wearing multiple hats and parading around as a chorus of creditors." (Debtor Brief at ¶ 54). In support of this position, the Debtors cite to the Final Award, where the Arbitrator found that Murchinson by itself and through various affiliates attempted to take over the Eletson Enterprise "through bribes, conspiring with Eletson [Holdings]' outside counsel, interfering with financiers, and causing arrests of vessels." (*Id.* (citing Final Award at 50–52, 56, 62, 69)). The Debtors also argue that the acrimony alone in these cases does not rise to the level warranting the appointment as has been found in other cases. (*Id.* at ¶ 57). The Debtors further assert that, of the 26 letters the UST admitted into evidence in these proceedings to show acrimony, only 11 were submitted by the Debtors, certain others were requested by the Court, and several were simply requesting conferences with the Court in compliance with the Court's chambers rules. (*Id.* at ¶ 58) The Shareholders assert that the Debtors have acted "in good faith and have remained responsive to all reasonable requests of

creditors in these chapter 11 cases despite being compelled to fight a multi-front battle with the Murchinson [e]ntities before this Court, the District Court, and the Arbitration." (Shareholder Brief at ¶ 32 (citing Karastamati Declaration at ¶¶ 27–31)).

The Court finds that this factor is neutral, and ultimately does not support the appointment of a Chapter 11 Trustee on its own given the Court's other findings herein. Preliminarily, the Court acknowledges that virtually all of the Debtors' creditors who have appeared in these cases support the appointment of a Trustee. (PC Brief at ¶ 26 (citing Docket Nos. 404, 420, 476, 491); Committee Brief at ¶ 14 (citing Creditor Ex. 117, 119, 135; Debtor Ex. 691); UST Brief at 9)). However, the Court is also cognizant of the fact that these cases began as involuntary Chapter 7 proceedings and were later converted to voluntary Chapter 11 proceedings by stipulation. (*See* Docket No. 215). As often happens in involuntary bankruptcy proceedings, the Debtors may not be on the same page as their creditors. Were this factor sufficient on its own, Chapter 11 Trustees would likely be appointed in many more cases, and Section 1104 relief would no longer be an "extraordinary remedy." *See In re Bayou Grp., LLC*, 564 F.3d 541, 546 (2d Cir. 2009) (citing *In re Adelphia Commc'ns Corp.*, 336 B.R. 610, 655 (Bankr. S.D.N.Y.), *aff'd*, 342 B.R. 122 (S.D.N.Y. 2006)). For these reasons, the Court is unpersuaded by the argument that a Chapter 11 Trustee should be appointed simply because most creditors want one.

The Court also acknowledges that these cases are acrimonious, but likewise does not believe such acrimony warrants a trustee at this time. While some cases have held that acrimony alone is sufficient to appoint a Chapter 11 Trustee, the Court finds the level of such acrimony here distinguishable. *See e.g. In re Eurospark Indus., Inc.*, 424 B.R. 621, 630 (Bankr. E.D.N.Y. 2010) (involving the unwillingness of one of the debtor's principal's to approve a settlement of the estate's last remaining asset—claims against certain insurance companies—even though

nearly all claims would have been paid by the settlement, all because the principal would receive no recovery if the settlement were approved); *Marvel Entm't Group, Inc.*, 140 F.3d 463, 474 (3d Cir.1998) (involving situation where a creditor-controlled debtor was at odds with the debtor's lenders and the creditor controlled debtor would be placed in the "awkward position of evaluating their own indenture and debt claims" against the lenders); *In re Eljamal*, 2018 WL 4735719, at *7 n.12 (S.D.N.Y. Sept. 28, 2018) (where the parties had filed "numerous adversary actions against each other," had frequent discovery disputes, and could not resolve routine motions); *Taub v. Adams*, No. 10-CV-02600 CBA, 2010 WL 8961434, at *3 (E.D.N.Y. Aug. 31, 2010) (where the debtor had *inter alia*, hired and fired 8 different lawyers over a 21-month period)). Here, the Court notes that the parties have resolved numerous issues by stipulation (*See e.g.*, Docket Nos. 23, 37, 48, 83, 625, 626), and even worked together to resolve a litany of objections to the disclosure statements after the Hearings on the instant Trustee Motions. Stated succinctly, the Court does not believe that the acrimony in these cases is an impediment to the Debtors' ability to reorganize. *In re Taub*, 427 B.R. 208, 227 (Bankr. E.D.N.Y. 2010), *aff'd*, No. 08 BK 44210 ESS, 2011 WL 1322390 (E.D.N.Y. Mar. 31, 2011) (noting that "Courts have appointed trustees pursuant to Section 1104(a)(2) when there is '[a] high level of acrimony between a debtor's management and its creditors, . . . *particularly if that acrimony is hampering the prospects of rehabilitation*.'" (emphasis added)).

The Court is also unpersuaded by the cases cited by the Movants for the proposition that excessive letter-writing warrants the imposition of a Chapter 11 Trustee. For instance, in *Taub*, the court found that letters on the docket are indicative of the level of acrimony in a case. *In re Taub*, 427 B.R. 208, 217 (Bankr. E.D.N.Y. 2010), *aff'd*, No. 08 BK 44210 ESS, 2011 WL 1322390 (E.D.N.Y. Mar. 31, 2011) (noting that "[n]umerous letters filed by the parties reflect the

acrimony between the parties and show that they have been unable to agree on how, when, or where to proceed with depositions and other discovery"). However, here, the Court agrees with the Debtors that certain of the letters identified by the UST, merely request status conferences, or were not filed by the Debtors. (Debtor Brief at ¶ 58). In any event, the Court does not believe that the letter-writing in this case, standing alone, is sufficient to warrant the appointment of a Chapter 11 Trustee under these circumstances.

For these reasons, the Court finds that this factor at most is neutral towards the appointment of a Chapter 11 Trustee.

d. Cost-Benefit Analysis

Finally, Courts determining whether to appoint a Chapter 11 Trustee under Section 1104(a)(2) of the Bankruptcy Code must weigh the costs against the benefits of such an appointment.

In support of this factor, the Petitioning Creditors argue that: (i) a neutral trustee would eliminate the acrimonious and costly litigation in these cases; (ii) overwhelming creditor support for the Trustee Motions shows that the creditors are willing to take on the cost of the appointment of the trustee; (iii) "if the Debtors are correct that there is no asset liquidation value for creditors to recover here (Docket No. 513 at ¶ 69), then appointment of a Trustee should pose no harm to the estates;" and (iv) there is no actual evidence that a trustee would adversely affect the Debtors' business. (PC Brief at ¶ 28; *see also* Committee Brief at ¶ 15 (noting that "[w]here creditors are 'willing to risk the costs, uncertainties and dislocations, occasioned by the appointment of a trustee' the Court should 'exercise its equitable powers to order that appointment'")).

In response, the Debtors assert that the appointing a Chapter 11 Trustee would be devastating to the Debtors and would not be in the Debtors' best interest. (Debtor Brief at ¶¶ 60–67; Shareholder Brief at ¶¶ 27–31). Specifically, they assert that the appointment of a Chapter 11 Trustee would be a default under the bareboat charters. (Debtor Brief at ¶ 63 (citing Kertsikoff Declaration at ¶ 74)). They further assert that a default under the bareboat charters would greatly harm their subsidiaries and reduce the Eletson Enterprise' value, which would be detrimental to all parties in interest. (Debtor Brief at ¶¶ 63–66). Finally, they argue that the international shipping industry requires a high level of expertise, which the current principles can uniquely provide. (Debtor Brief at ¶ 67 (citing Hadjieleftheriadis Declaration at ¶¶ 10, 69, 71; Karastamati Declaration at ¶ 34–44); *see also* Shareholder Brief at ¶ 27). Additionally, the Shareholders argue that a Chapter 11 Trustee would be needlessly expensive. (Shareholder Brief at ¶¶ 30–31). They further assert that "uprooting of the entirety of a debtor's existing and knowledgeable management is an ill-suited remedy to address a level of acrimony that exists in nearly all contested bankruptcy matters such as" these cases. (*Id.* at ¶ 34 (citing Shareholder Objection at ¶¶ 35–36; 53)).

Here, the Court once again finds that this factor does not weigh in favor of the appointment of a Chapter 11 Trustee. Indeed, as set forth in *WorldCom*, "[u]nder section 1104(a)(2), a creditor group, no matter how dominant, cannot justify the appointment of a trustee simply by alleging that it would be in its interests." *In re WorldCom, Inc.*, No. 02-13553 (AJG), 2003 Bankr. LEXIS 2192, at *19 (Bankr. S.D.N.Y. May 16, 2003) (citations omitted). The *WorldCom* court went on to say:

> It is important to remember that the "interests" standard requires a finding that appointment of a trustee would be in the interest of essentially all interested constituencies. . . . Use of the word "and" [in the text of section 1104(a)(2)] suggests that creditors cannot on their own obtain the appointment of a trustee under the

> provision in order to disenfranchise equity security holders or other interests. Instead, appointment of a trustee must be in the interest of the estate generally in order to satisfy the statutory "interest" standard.

Id. (*quoting* 7 Alan N. Resnick & Frank J. Sommer, Collier on Bankruptcy § 1104.02 (15th ed. rev. 2003)).

Additionally, the Court finds that the potential costs of the appointment of a Chapter 11 Trustee do not warrant the benefits at this time. Principally, though these cases have often been acrimonious and involved discovery disputes of many kinds, they have been progressing. Indeed, since these cases were converted to Chapter 11, counsel have been retained for both the Debtors and the Committee, interim fees have been paid, and disclosure statements and competing plans have been filed. The appointment of a Chapter 11 Trustee at this stage could significantly delay the progress that has been made on the eve of potential solicitation of competing plans of reorganization.

Moreover, the potential costs are great. Not only are Chapter 11 Trustees potentially expensive (Shareholder Brief at ¶¶ 30–31), but the appointment of a Chapter 11 Trustee in these cases at this time could harm the Debtors' enterprise value, which is ultimately harmful to the very creditors who seek to appoint one. Accordingly, the Court finds that this factor does not weigh in favor of the appointment of a Chapter 11 Trustee.

V. CONCLUSION

For the foregoing reasons, the Court finds that a Chapter 11 Trustee should not be appointed at this time.[15] Accordingly, it is

ORDERED that the PC Motion in Limine and the Debtors' Motion to Exclude are DENIED; and it is further

ORDERED that the Trustee Motions are DENIED.

IT IS SO ORDERED.

Dated: May 29, 2024
New York, New York

/s/ John P. Mastando III
HONORABLE JOHN P. MASTANDO III
UNITED STATES BANKRUPTCY JUDGE

[15] Finally, the Petitioning Creditors also argued in the PC Motion that a Chapter 11 Trustee should be appointed pursuant to Section 1112(b)(1) of the Bankruptcy Code due to failure to comply with an order of the Court and for substantial and continuing loss to the estate with an absence of reasonable likelihood of rehabilitation. (PC Trustee Motion at ¶¶ 16–19). Specifically, the Petitioning Creditors assert that the Debtors are in violation of the Interim Compensation Order and have no ability to finance these cases and that an independent estate fiduciary should continue to operate the estate as a going concern and pursue potential estate causes of action for the benefit of creditors. (*Id.*) The Court notes that the Petitioning Creditors did not address these arguments in the PC Reply or at the Hearings. However, the Court further notes that similar arguments were raised and rejected by the Court in connection with the Petitioning Creditors' arguments in support of a trustee appointment pursuant to Section 1104(a)(1). (*See infra*, section III.B). Accordingly, to the extent that the portion of the PC Motion seeking relief under Section 1112(b)(1) of the Bankruptcy Code is still being urged, that portion of the PC Motion is also denied.

EXHIBIT K

Fill in this information to identify the case:

Debtor name Eletson Holdings Inc.

United States Bankruptcy Court for the: Southern District of New York (State)

Case number (If known): 23-10322 (JPM)

☑ Check if this is an amended filing

Official Form 206A/B

Schedule A/B: Assets — Real and Personal Property

12/15

Disclose all property, real and personal, which the debtor owns or in which the debtor has any other legal, equitable, or future interest. Include all property in which the debtor holds rights and powers exercisable for the debtor's own benefit. Also include assets and properties which have no book value, such as fully depreciated assets or assets that were not capitalized. In Schedule A/B, list any executory contracts or unexpired leases. Also list them on *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G).

Be as complete and accurate as possible. If more space is needed, attach a separate sheet to this form. At the top of any pages added, write the debtor's name and case number (if known). Also identify the form and line number to which the additional information applies. If an additional sheet is attached, include the amounts from the attachment in the total for the pertinent part.

For Part 1 through Part 11, list each asset under the appropriate category or attach separate supporting schedules, such as a fixed asset schedule or depreciation schedule, that gives the details for each asset in a particular category. List each asset only once. In valuing the debtor's interest, do not deduct the value of secured claims. See the instructions to understand the terms used in this form.

Part 1: Cash and cash equivalents

1. **Does the debtor have any cash or cash equivalents?**

☑ No. Go to Part 2.
☐ Yes. Fill in the information below.

All cash or cash equivalents owned or controlled by the debtor			Current value of debtor's interest
2. Cash on hand			$
3. Checking, savings, money market, or financial brokerage accounts *(Identify all)*			
Name of institution (bank or brokerage firm)	Type of account	Last 4 digits of account number	
3.1.		____	$
3.2.		____	$
4. Other cash equivalents *(Identify all)*			
4.1.			$
4.2.			$
5. Total of Part 1 Add lines 2 through 4 (including amounts on any additional sheets). Copy the total to line 80.			$

Part 2: Deposits and prepayments

6. **Does the debtor have any deposits or prepayments?**

☑ No. Go to Part 3.
☐ Yes. Fill in the information below.

	Current value of debtor's interest
7. Deposits, including security deposits and utility deposits	
Description, including name of holder of deposit	
7.1.	$
7.2.	$

Debtor Eletson Holdings Inc. Case number (if known) 23-10322 (JPM)
Name

8. **Prepayments, including prepayments on executory contracts, leases, insurance, taxes, and rent**

Description, including name of holder of prepayment

8.1. _____ $_____

8.2. _____ $_____

9. **Total of Part 2.**
Add lines 7 through 8. Copy the total to line 81. $_____

Part 3: Accounts receivable

10. **Does the debtor have any accounts receivable?**

☑ No. Go to Part 4.

☐ Yes. Fill in the information below.

Current value of debtor's interest

11. **Accounts receivable**

11a. 90 days old or less: _____ (face amount) – _____ (doubtful or uncollectible accounts) = ... → $_____

11b. Over 90 days old: _____ (face amount) – _____ (doubtful or uncollectible accounts) = ... → $_____

12. **Total of Part 3**
Current value on lines 11a + 11b = line 12. Copy the total to line 82. $_____

Part 4: Investments

13. **Does the debtor own any investments?**

☐ No. Go to Part 5.

☑ Yes. Fill in the information below.

	Valuation method used for current value	Current value of debtor's interest
14. **Mutual funds or publicly traded stocks not included in Part 1**		
Name of fund or stock:		
14.1. _____	_____	$_____
14.2. _____	_____	$_____

15. **Non-publicly traded stock and interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture**

Name of entity:	% of ownership:		
15.1. See attached rider	_____%	Market Value	$ Unknown
15.2. _____	_____%	_____	$_____

16. **Government bonds, corporate bonds, and other negotiable and non-negotiable instruments not included in Part 1**

Describe:

16.1. _____ _____ $_____

16.2. _____ _____ $_____

17. **Total of Part 4**
Add lines 14 through 16. Copy the total to line 83. $0

Debtor Eletson Holdings Inc. Case number (if known) 23-10322 (JPM)
Name

Part 5: Inventory, excluding agriculture assets

18. Does the debtor own any inventory (excluding agriculture assets)?
- ☑ No. Go to Part 6.
- ☐ Yes. Fill in the information below.

General description	Date of the last physical inventory	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
19. Raw materials				
	MM / DD / YYYY	$		$
20. Work in progress				
	MM / DD / YYYY	$		$
21. Finished goods, including goods held for resale				
	MM / DD / YYYY	$		$
22. Other inventory or supplies				
	MM / DD / YYYY	$		$

23. Total of Part 5
Add lines 19 through 22. Copy the total to line 84. $

24. Is any of the property listed in Part 5 perishable?
- ☐ No
- ☐ Yes

25. Has any of the property listed in Part 5 been purchased within 20 days before the bankruptcy was filed?
- ☐ No
- ☐ Yes. Book value _____ Valuation method _____ Current value _____

26. Has any of the property listed in Part 5 been appraised by a professional within the last year?
- ☐ No
- ☐ Yes

Part 6: Farming and fishing-related assets (other than titled motor vehicles and land)

27. Does the debtor own or lease any farming and fishing-related assets (other than titled motor vehicles and land)?
- ☑ No. Go to Part 7.
- ☐ Yes. Fill in the information below.

General description	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
28. Crops—either planted or harvested	$		$
29. Farm animals *Examples*: Livestock, poultry, farm-raised fish	$		$
30. Farm machinery and equipment (Other than titled motor vehicles)	$		$
31. Farm and fishing supplies, chemicals, and feed	$		$
32. Other farming and fishing-related property not already listed in Part 6	$		$

Debtor Eletson Holdings Inc. Case number (if known) 23-10322 (JPM)
Name

33. **Total of Part 6.**
Add lines 28 through 32. Copy the total to line 85. $_____

34. **Is the debtor a member of an agricultural cooperative?**

- ☐ No
- ☐ Yes. Is any of the debtor's property stored at the cooperative?
  - ☐ No
  - ☐ Yes

35. **Has any of the property listed in Part 6 been purchased within 20 days before the bankruptcy was filed?**

- ☐ No
- ☐ Yes. Book value $_____ Valuation method _____ Current value $_____

36. **Is a depreciation schedule available for any of the property listed in Part 6?**

- ☐ No
- ☐ Yes

37. **Has any of the property listed in Part 6 been appraised by a professional within the last year?**

- ☐ No
- ☐ Yes

Part 7: Office furniture, fixtures, and equipment; and collectibles

38. **Does the debtor own or lease any office furniture, fixtures, equipment, or collectibles?**

- ☑ No. Go to Part 8.
- ☐ Yes. Fill in the information below.

General description	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
39. **Office furniture**			
_____	$_____	_____	$_____
40. **Office fixtures**			
_____	$_____	_____	$_____
41. **Office equipment, including all computer equipment and communication systems equipment and software**			
_____	$_____	_____	$_____
42. **Collectibles** *Examples:* Antiques and figurines; paintings, prints, or other artwork; books, pictures, or other art objects; china and crystal; stamp, coin, or baseball card collections; other collections, memorabilia, or collectibles			
42.1 _____	$_____	_____	$_____
42.2 _____	$_____	_____	$_____
42.3 _____	$_____	_____	$_____

43. **Total of Part 7.**
Add lines 39 through 42. Copy the total to line 86. $_____

44. **Is a depreciation schedule available for any of the property listed in Part 7?**

- ☐ No
- ☐ Yes

45. **Has any of the property listed in Part 7 been appraised by a professional within the last year?**

- ☐ No
- ☐ Yes

Debtor Eletson Holdings Inc. Case number (if known) 23-10322 (JPM)

Name

Part 8: Machinery, equipment, and vehicles

46. **Does the debtor own or lease any machinery, equipment, or vehicles?**

☑ No. Go to Part 9.

☐ Yes. Fill in the information below.

General description Include year, make, model, and identification numbers (i.e., VIN, HIN, or N-number)	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
47. Automobiles, vans, trucks, motorcycles, trailers, and titled farm vehicles			
47.1	$		$
47.2	$		$
47.3	$		$
47.4	$		$
48. Watercraft, trailers, motors, and related accessories Examples: Boats, trailers, motors, floating homes, personal watercraft, and fishing vessels			
48.1	$		$
48.2	$		$
49. Aircraft and accessories			
49.1	$		$
49.2	$		$
50. Other machinery, fixtures, and equipment (excluding farm machinery and equipment)			
	$		$

51. **Total of Part 8.**
Add lines 47 through 50. Copy the total to line 87. $

52. **Is a depreciation schedule available for any of the property listed in Part 8?**

☐ No

☐ Yes

53. **Has any of the property listed in Part 8 been appraised by a professional within the last year?**

☐ No

☐ Yes

Debtor Eletson Holdings Inc. Case number (if known) 23-10322 (JPM)

Name

Part 9: Real property

54. **Does the debtor own or lease any real property?**

☑ No. Go to Part 10.

☐ Yes. Fill in the information below.

55. **Any building, other improved real estate, or land which the debtor owns or in which the debtor has an interest**

	Description and location of property Include street address or other description such as Assessor Parcel Number (APN), and type of property (for example, acreage, factory, warehouse, apartment or office building), if available.	Nature and extent of debtor's interest in property	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
55.1			$		$
55.2			$		$
55.3			$		$
55.4			$		$
55.5			$		$
55.6			$		$

56. **Total of Part 9.**

Add the current value on lines 55.1 through 55.6 and entries from any additional sheets. Copy the total to line 88.

$

57. **Is a depreciation schedule available for any of the property listed in Part 9?**

☐ No

☐ Yes

58. **Has any of the property listed in Part 9 been appraised by a professional within the last year?**

☐ No

☐ Yes

Part 10: Intangibles and intellectual property

59. **Does the debtor have any interests in intangibles or intellectual property?**

☑ No. Go to Part 11.

☐ Yes. Fill in the information below.

	General description	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
60.	**Patents, copyrights, trademarks, and trade secrets**	$		$
61.	**Internet domain names and websites**	$		$
62.	**Licenses, franchises, and royalties**	$		$
63.	**Customer lists, mailing lists, or other compilations**	$		$
64.	**Other intangibles, or intellectual property**	$		$
65.	**Goodwill**	$		$

66. **Total of Part 10.**

Add lines 60 through 65. Copy the total to line 89.

$

Debtor Eletson Holdings Inc. Case number (if known) 23-10322 (JPM)

67. **Do your lists or records include personally identifiable information of customers** (as defined in 11 U.S.C. §§ 101(41A) and 107)?
- ☐ No
- ☐ Yes

68. **Is there an amortization or other similar schedule available for any of the property listed in Part 10?**
- ☐ No
- ☐ Yes

69. **Has any of the property listed in Part 10 been appraised by a professional within the last year?**
- ☐ No
- ☐ Yes

Part 11: All other assets

70. **Does the debtor own any other assets that have not yet been reported on this form?**
Include all interests in executory contracts and unexpired leases not previously reported on this form.
- ☐ No. Go to Part 12.
- ☑ Yes. Fill in the information below.

Current value of debtor's interest

71. **Notes receivable**
Description (include name of obligor)
_____ Total face amount – _____ doubtful or uncollectible amount = → $_____

72. **Tax refunds and unused net operating losses (NOLs)**
Description (for example, federal, state, local)
_____ Tax year _____ $_____
_____ Tax year _____ $_____
_____ Tax year _____ $_____

73. **Interests in insurance policies or annuities**
_____ $_____

74. **Causes of action against third parties (whether or not a lawsuit has been filed)** $ Unknown
(a) Murchinson Ltd., Nomis Bay Ltd., and BPY Limited
Nature of claim Bankr. S.D.N.Y. 23-01132
Amount requested $_____
☐

(b) Claims against Wilmington Savings Fund Society, FSB $ Unknown
Nature of claim _____
Amount requested $_____

(c) Claims against Petitioning Creditors for Bad Faith conduct
Nature of claim _____
Amount requested $_____ $ Unknown

(d) Potential Claims against various parties related to or arising from the Arbitration Award (including potential claims identified in prior filings in this case, which the Debtor believes are subject to substantial defenses and are meritless and have no value.) $ Unknown

Debtor Eletson Holdings Inc. Case number (if known) 23-10322 (JPM)
Name

75. **Other contingent and unliquidated claims or causes of action of every nature, including counterclaims of the debtor and rights to set off claims**

Nature of claim _____ $_____

Amount requested $_____

76. **Trusts, equitable or future interests in property**

77. **Other property of any kind not already listed** *Examples:* Season tickets, country club membership

$_____

$_____

78. **Total of Part 11.**
Add lines 71 through 77. Copy the total to line 90. $ 0

79. **Has any of the property listed in Part 11 been appraised by a professional within the last year?**

- ☐ No
- ☐ Yes

Part 12: Summary

In Part 12 copy all of the totals from the earlier parts of the form.

Type of property	Current value of personal property	Current value of real property
80. **Cash, cash equivalents, and financial assets.** *Copy line 5, Part 1.*	$ 0	
81. **Deposits and prepayments.** *Copy line 9, Part 2.*	$ 0	
82. **Accounts receivable.** *Copy line 12, Part 3.*	$ 0	
83. **Investments.** *Copy line 17, Part 4.*	$ Unknown	
84. **Inventory.** *Copy line 23, Part 5.*	$ 0	
85. **Farming and fishing-related assets.** *Copy line 33, Part 6.*	$ 0	
86. **Office furniture, fixtures, and equipment; and collectibles.** *Copy line 43, Part 7.*	$ 0	
87. **Machinery, equipment, and vehicles.** *Copy line 51, Part 8.*	$ 0	
88. **Real property.** *Copy line 56, Part 9.* →		$ 0
89. **Intangibles and intellectual property.** *Copy line 66, Part 10.*	$ 0	
90. **All other assets.** *Copy line 78, Part 11.*	+ $ Unknown	
91. **Total.** Add lines 80 through 90 for each column. 91a.	$ 0 +	91b. $ 0

92. **Total of all property on Schedule A/B.** Lines 91a + 91b = 92. $ 0

In re Eletson Holdings, Inc.

Amended Rider To Question 15 on Schedule A/B.

15.1 Fournoi Shipping Corporation (100%) - $1,974,000
15.2 Arginusae Holdings, Inc. (100%) - $13,000
15.3 Five Investment Inc. (100%) - $8,000
15.4 Glaronissi Shipping Corporation (100%) - $759,000
15.5 EMC Investment Corporation (100%) - $3,452,000
15.6 Eletson Corporation (100%) - $0
15.7 Agathonissos Finance LLC (100%) - $0
15.8 Eletson Finance (US) LLC (100%) - $0
15.9 Eletson Gas LLC (100% of common shares) - $0
15.10 Kastos Special Maritime Enterprise (100%) - $11,871,000
15.11 Fourni Special Maritime Enterprise (100%) - $12,665,000
15.12 Kinaros Special Maritime Enterprise (100%) - $9,816,000
15.13 Kimolos II Special Maritime Enterprise (100%) - $11,785,000
15.14 Antikeros Special Maritime Enterprise (100%) - $0
15.15 Dhonoussa Special Maritime Enterprise (100%) - $0
15.16 Polyaigos Special Maritime Enterprise (100%) - $0
15.17 Strofades Special Maritime Enterprise (100%) - $0
15.18 Eletson Chartering Inc. (100%) - $4,000
15.19 Kastelorizo Shipping Corporation (100%) - $0
15.20 Folegandros Shipping Corporation (100%) - $0
15.21. Eletson Chartering II Inc. (100%) - $0
15.35. Eletson Chartering III Inc., Liberia (100%) - $0
15.36. Argironissos Shipping Corporation (100%) - $0
15.37. Salamina Shipping Corporation (100%) - $0
15.38. Samothraki Shipping Corporation (100%) - $0
15.39. Eletson Offshore Inc. (100%) - $0
15.40. Eletson Chartering III Inc., Marshal Islands (100%) - $0
15.41. Agathonissos Shipping Corporation (100%) - $0
15.42. Alkyonis Shipping Corporation (100%) - $0
15.43. Alonissos Shipping Corporation (100%) - $0
15.44. Angistri Shipping Corporation (100%) - $0
15.45. Dhokos Shipping Corporation (100%) - $0
15.46. Erikoussa Shipping Corporation (100%) - $0
15.47. Kandilousa Shipping Corporation (100%) - $45,000
15.48. Karos II Shipping Corporation (100%) - $0
15.49. Makronissos Shipping Corporation (100%) - $0
15.50. Megalonissos Shipping Corporation (100%) - $0
15.51. Parapola Shipping Corporation (100%) - $0
15.52. Pelagos Shipping Corporation (100%) - $0
15.53. Serifopoulo Shipping Corporation (100%) - $36,000
15.54. Serifos Shipping Corporation (100%) - $0
15.55. Skiropoula Shipping Corporation (100%) - $0
15.56. Skopelos Shipping Corporation (100%) - $0

15.57. Sporades Shipping Corporation (100%) - $7,000
15.58. Stavronisi Shipping Corporation (100%) - $0
15.59. Velopoula Shipping Corporation (100%) - $24,000
15.60. Astipalea Shipping Corporation (100%) - $0
15.61. Kithnos Shipping Corporation (100%) - $0
15.62. Paros Shipping Corporation (100%) - $0
15.63. Othoni Shipping Corporation (100%) - $0
15.64. Mathraki Shipping Corporation (100%) - $0
15.65. Limnos Shipping Corporation (100%) - $0
15.66. Dilos Shipping Corporation (100%) - $0
15.67. Despotico Shipping Corporation (100%) - $0
15.68. Antimilos Shipping Corporation (100%) - $0
15.69. Anafi Shipping Corporation (100%) - $0
15.70. Thira Shipping Corporation (100%) - $0
15.71. Karos Shipping Corporation (100%) - $0
15.72. Dhonousa Shipping Corporation - $0
15.73. Antikeros Shipping Corporation - $0

Basis of Presentation – The Debtors are filing this disclosure solely for the purposes of complying with the reporting requirements applicable in their respective chapter 11 cases. The financial information contained herein for each entity subject to the reporting requirement (collectively the "Controlled Non-Debtor Entities") is presented on a preliminary and unaudited basis, remains subject to adjustments, and to the best of the Debtors' knowledge complies in all material respects with generally accepted accounting principles in the United States of America ("U.S. GAAP"). This disclosure should not be relied on by any persons for information relating to the Debtors' future financial conditions, events, or performance. The financial information has been derived from the books and records of the Controlled Non-Debtor Entities; however, as the Controlled Non-Debtor Entities ordinarily do not prepare separate financial information, certain assumptions, estimations, and allocations were made to prepare the financial information for each Controlled Non-Debtor Entity. Additionally, this information has not been subjected to certain procedures and adjustments that typically would be applied to financial information in accordance with U.S. GAAP, which procedures and adjustments could yield materially different financial information.

Reservation of Rights – Given the complexity of the Controlled Non-Debtor Entities' businesses and typical consolidation of financial information, inadvertent errors, omissions or over-inclusions of amounts may have occurred. Accordingly, the Debtors hereby reserve all rights to dispute the representations or other statements in this disclosure. The Debtors reserve the right to amend or supplement this disclosure if necessary but are under no obligation to do so.

Statement Regarding Special Maritime Entities – Each of (i) Kastos Special Maritime Enterprise, (ii) Fourni Special Maritime Enterprise, (iii) Kinaros Special Maritime Enterprise and (iv) Kimolos II Special Maritime Enterprise is a party to a Bareboat Charter arrangement. The "Vessel" and "lease commitment line" items on those entities' respective balance sheets reflect the book value of the vessel subject to the charter and the remaining principal balance of the

charter payments under that charter. The balance sheet does not reflect any costs of the exercise of the entity's purchase option for such vessel subject to the charter. The values reflected are also contingent upon each applicable Controlled Non-Debtor Entity's ability to exercise such purchase option.

Statement Regarding Basis of Debtors' Financial Presentations – The figures reflected on the financial statements presented by the Debtors have been derived from the Debtors' books and records and historical financial statements. Book values of assets may differ materially from the actual value and/or market value of the underlying assets. The true market value of the Debtors' assets to determine the Debtors' enterprise valuation are and remain subject to ongoing review and determination.

Statement Regarding Entitles Previously Identified - The following entities previously identified on the Debtor's Schedule A/B (with their original identification number) were inadvertently included. Upon further review of the Debtor's books and records, the following entities were transferred to New Agathonissos Finance LLC in June 2019.

15.22. Skyros II Shipping Corporation
15.23. Venetiko Shipping Corporation
15.24. Agathonissos Special Maritime Enterprise
15.25. Alonissos Special Maritime Enterprise
15.26. Angistri Special Maritime Enterprise
15.27. Erikoussa Special Maritime Enterprise
15.28. Makronissos Special Maritime Enterprise
15.29. Megalonissos Special Maritime Enterprise
15.30. Pelagos II Special Maritime Enterprise
15.31. Skopelos II Special Maritime Enterprise
15.32. Sarakiniko Shipping Corporation
15.33. Shinoussa Shipping Corporation
15.34. Sikinos II Shipping Corporation

Fill in this information to identify the case and this filing:

Debtor Name Eletson Holdings Inc.

United States Bankruptcy Court for the: Southern District of New York (State)

Case number (*If known*): 23-10322 (JPM)

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ *Schedule A/B: Assets–Real and Personal Property* (Official Form 206A/B)
- ☐ *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- ☐ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- ☐ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- ☐ *Schedule H: Codebtors* (Official Form 206H)
- ☐ *Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- ☑ Amended *Schedule* A/B
- ☐ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders* (Official Form 204)
- ☐ Other document that requires a declaration_____

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12/28/2023
MM / DD / YYYY

X /s/ Vasileios Chatzieleftheriadis
Signature of individual signing on behalf of debtor

Vasileios Chatzieleftheriadis
Printed name

Vice President, Treasurer and Director
Position or relationship to debtor

EXHIBIT L

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

NOTICE OF FILING OF SOLICITATION VERSION OF DISCLOSURE STATEMENT IN SUPPORT OF PETITIONING CREDITORS' JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ELETSON HOLDINGS INC. AND ITS AFFILIATED DEBTORS

PLEASE TAKE NOTICE THAT on March 26, 2024, certain of the Petitioning Creditors, as the "Plan Proponents," filed the (a) *Joint Chapter 11 Plan of Reorganization of Eletson Holdings Inc. and its Affiliated Debtors* [Docket No. 531] (the "Initial Plan") and (b) the related disclosure statement [Docket No. 532] (the "Initial Disclosure Statement").

PLEASE TAKE FURTHER NOTICE THAT the Plan Proponents filed amended versions of the Initial Disclosure Statement on May 13, May 14, and June 6, 2024 [Docket Nos. 664, 696, and 741]. Subsequently, on June 17, 2024, the Plan

[1] The Debtors in these cases are: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC. The address of the Debtors' corporate headquarters is 118 Kolokotroni Street, GR 185 35 Piraeus, Greece. The Debtors' mailing address is c/o Eletson Maritime, Inc., 1 Landmark Square, Suite 424, Stamford, Connecticut 06901.

Proponents filed a further amended version of the Initial Disclosure Statement [Docket No. 796] (the "Amended Disclosure Statement").[2]

PLEASE TAKE FURTHER NOTICE THAT Plan Proponents hereby file:

- a solicitation version of the Amended Disclosure Statement, attached hereto as **Exhibit 1** (the "Solicitation Amended Disclosure Statement");

- a redline of the Solicitation Amended Disclosure Statement, showing the changes to the Amended Disclosure Statement, attached hereto as **Exhibit 2** (the "Redline").

PLEASE TAKE FURTHER NOTICE THAT on the date hereof, the Plan Proponents also filed a revised version of the Initial Plan, (as may be further amended, modified, and/or supplemented from time to time, the "Solicitation Amended Plan") that reflects the modifications made in the Solicitation Amended Disclosure Statement.

PLEASE TAKE FURTHER NOTICE THAT copies of the Solicitation Amended Disclosure Statement, Solicitation Amended Plan and other related pleadings filed in the Chapter 11 Cases can be viewed or obtained by: (i) accessing the Court's website for a fee; or (ii) contacting the Office of the Clerk of the Court. Please note that a PACER password is required to access documents on the Court's website. **PLEASE NOTE: Neither the staff of the Clerk's office nor the Petitioning Creditors' counsel can give you legal advice.**

DATED: July 8, 2024
New York, New York

TOGUT, SEGAL & SEGAL LLP
By:

/s/Kyle J. Ortiz
KYLE J. ORTIZ
BRYAN M. KOTLIAR
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Counsel for the Petitioning Creditors

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Amended Disclosure Statement.

Exhibit 1

Solicitation Amended Disclosure Statement
(Clean)

ACCEPTANCES OR REJECTIONS WITH RESPECT TO THE PLAN ARE BEING SOLICITED PURSUANT TO THIS DISCLOSURE STATEMENT, WHICH HAS BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION WITHIN THE MEANING OF SECTION 1125(a) OF THE BANKRUPTCY CODE. THE PETITIONING CREDITORS RESERVE THE RIGHT TO AMEND OR SUPPLEMENT THIS DISCLOSURE STATEMENT. THIS DISCLOSURE STATEMENT IS A SOLICITATION VERSION AND INTENDED SOLELY FOR THE SOLICITATION OF VOTES ON THE PLAN.

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)

AMENDED DISCLOSURE STATEMENT IN SUPPORT OF PETITIONING CREDITORS' AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ELETSON HOLDINGS INC. AND ITS AFFILIATED DEBTORS

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Amanda C. Glaubach

Counsel for the Petitioning Creditors[2]

Dated: July 8, 2024
New York, New York

---

[1] The Debtors in these cases are: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC. The address of the Debtors' corporate headquarters is 118 Kolokotroni Street, GR 185 35 Piraeus, Greece. The Debtors' mailing address is c/o Eletson Maritime, Inc., 1 Landmark Square, Suite 424, Stamford, Connecticut 06901.

[2] The "Petitioning Creditors" are Pach Shemen LLC, VR Global Partners, L.P., Alpine Partners (BVI), L.P., Gene B. Goldstein ("Goldstein") and Gene B. Goldstein, In His Capacity as Trustee of the Gene B. Goldstein and Francine T. Goldstein Family Trust ("Goldstein Trust", and together with Goldstein, "Mr. Goldstein"), Mark Millet, In His Capacity as Trustee of the Mark E. Millet Living Trust, Mark Millet, In His Capacity as Trustee of the Millet 2016 Irrevocable Trust, Robert Latter, Tracy Lee Gustafson, Jason Chamness, and Ron Pike. While Togut, Segal & Segal LLP represents Mr. Goldstein as a "Petitioning Creditor," Mr. Goldstein is not a "Plan Proponent" for purposes of the Plan.

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APPENDIX B -- Corporate Organization Chart

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APPENDIX E – Valuation Analysis

APPENDIX F – Initial Backstop Party Financial Wherewithal

THE PLAN PROPONENTS ARE PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT TO HOLDERS OF CLAIMS IN THE VOTING CLASSES FOR PURPOSES OF SOLICITING VOTES TO ACCEPT OR REJECT THE PETITIONING CREDITORS' JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ELETSON HOLDINGS INC. AND ITS AFFILIATED DEBTORS. NOTHING IN THIS DISCLOSURE STATEMENT MAY BE RELIED UPON OR USED BY ANY ENTITY FOR ANY OTHER PURPOSE. BEFORE DECIDING WHETHER TO VOTE FOR OR AGAINST THE PLAN (AS DEFINED HEREIN), EACH HOLDER ENTITLED TO VOTE SHOULD CAREFULLY CONSIDER ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN ARTICLE VIII HEREIN.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT (INCLUDING EXHIBITS) AND THE PLAN IN THEIR ENTIRETY AND ARE ADVISED TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX, OR BUSINESS ADVICE IN REVIEWING THIS DISCLOSURE STATEMENT, THE PLAN, AND THE TRANSACTIONS CONTEMPLATED THEREBY. FURTHER, THE BANKRUPTCY COURT'S APPROVAL OF THE ADEQUACY OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE PLAN.

FACTUAL INFORMATION CONTAINED IN THIS SPECIFIC DISCLOSURE STATEMENT IS SOURCED FROM PUBLIC FILINGS MADE IN THE CHAPTER 11 CASES (AND ELSEWHERE), EXCEPT WHERE OTHERWISE NOTED. IN PARTICULAR, SOME INFORMATION IN THIS DISCLOSURE STATEMENT WAS OBTAINED FROM THE DEBTORS' PLEADINGS, SUCH AS THE DEBTORS' DISCLOSURE STATEMENT, SCHEDULES OF ASSETS AND LIABILITIES AND STATEMENTS OF FINANCIAL AFFAIRS, AND MONTHLY OPERATING REPORTS AND MAY NOT BE RELIED UPON AS ACCURATE. THE PLAN PROPONENTS MAKE NO REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY OF THE INFORMATION, INCLUDING FINANCIAL INFORMATION, CONTAINED HEREIN OR ATTACHED HERETO. THE PLAN PROPONENTS EXPRESSLY CAUTION READERS NOT TO PLACE UNDUE RELIANCE ON ANY FINANCIAL OR FORWARD-LOOKING STATEMENTS CONTAINED HEREIN.

NO INDEPENDENT AUDITOR OR INDEPENDENT ACCOUNTANT HAS REVIEWED OR APPROVED THE LIQUIDATION ANALYSIS OR FINANCIAL INFORMATION PROVIDED OR REFERENCED HEREIN. THE PLAN PROPONENTS HAVE NOT AUTHORIZED ANY PERSON TO GIVE ANY INFORMATION OR ADVICE, OR TO MAKE ANY REPRESENTATION, IN CONNECTION WITH THE PLAN OR THIS DISCLOSURE STATEMENT.

PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT WITH RESPECT TO THE PLAN ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, THE EXHIBITS ATTACHED TO THE PLAN, AND ANY PLAN SUPPLEMENT(S). IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT

AND THE TERMS AND PROVISIONS OF THE PLAN OR THE OTHER DOCUMENTS AND FINANCIAL INFORMATION INCORPORATED IN THIS DISCLOSURE STATEMENT BY REFERENCE, THE PLAN OR THE OTHER DOCUMENTS AND FINANCIAL INFORMATION, AS THE CASE MAY BE, SHALL GOVERN FOR ALL PURPOSES.

THE STATEMENTS AND FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAVE BEEN MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFICALLY NOTED, AND THERE IS NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER SUCH DATE. HOLDERS OF CLAIMS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT ASSUME AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH IN THIS DISCLOSURE STATEMENT SINCE THE DATE OF THIS DISCLOSURE STATEMENT. THE PLAN PROPONENTS RESERVE THE RIGHT TO FILE AN AMENDED OR MODIFIED PLAN AND RELATED DISCLOSURE STATEMENT FROM TIME TO TIME, SUBJECT TO THE TERMS OF THE PLAN.

THIS DISCLOSURE STATEMENT WILL NOT CONSTITUTE NOR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION, OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT WILL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING, NOR WILL IT BE CONSTRUED TO CONSTITUTE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE PLAN AS IT RELATES TO HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTORS.

CERTAIN OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, BY THEIR NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. SUCH STATEMENTS CONSIST OF ANY STATEMENT OTHER THAN A RECITATION OF HISTORICAL FACT AND CAN BE IDENTIFIED BY THE USE OF FORWARD-LOOKING TERMINOLOGY SUCH AS "MAY," "EXPECT," "ANTICIPATE," "ESTIMATE," OR "CONTINUE," OR THE NEGATIVE THEREOF, OTHER VARIATIONS THEREON, OR COMPARABLE TERMINOLOGY AND INCLUDE THE LIQUIDATION ANALYSIS, FINANCIAL PROJECTIONS, AND VALUATION OF REORGANIZED HOLDINGS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES. FORWARD-LOOKING STATEMENTS ARE PROVIDED IN THIS DISCLOSURE STATEMENT PURSUANT TO THE SAFE HARBOR ESTABLISHED UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995 AND SHOULD BE EVALUATED IN THE CONTEXT OF THE ESTIMATES, ASSUMPTIONS, UNCERTAINTIES, AND RISKS DESCRIBED HEREIN.

FURTHER, THE READER IS CAUTIONED THAT ALL FORWARD-LOOKING STATEMENTS ARE NECESSARILY SPECULATIVE AND THAT THERE ARE CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM THOSE PRESENTED IN SUCH FORWARD-LOOKING STATEMENTS. DUE TO THESE UNCERTAINTIES, READERS CANNOT BE ASSURED THAT ANY FORWARD-LOOKING STATEMENTS WILL PROVE TO BE CORRECT. THE LIQUIDATION ANALYSIS, FINANCIAL PROJECTIONS, AND OTHER INFORMATION CONTAINED HEREIN AND ATTACHED HERETO ARE ESTIMATES ONLY, AND THE VALUE OF THE PROPERTY DISTRIBUTED TO HOLDERS OF ALLOWED CLAIMS OR EQUITY INTERESTS MAY BE AFFECTED BY MANY FACTORS THAT CANNOT BE PREDICTED. THEREFORE, ANY ANALYSES, ESTIMATES, OR RECOVERY PROJECTIONS MAY OR MAY NOT TURN OUT TO BE ACCURATE. THE PLAN PROPONENTS ARE UNDER NO OBLIGATION TO (AND EXPRESSLY DISCLAIM ANY OBLIGATION TO) UPDATE OR ALTER ANY FORWARD-LOOKING STATEMENTS WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS, OR OTHERWISE, EXCEPT AS REQUIRED BY APPLICABLE LAW. ALL HOLDERS OF IMPAIRED CLAIMS SHOULD CAREFULLY READ AND CONSIDER THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY, INCLUDING SECTION V—"RISK FACTORS TO BE CONSIDERED" BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

THE SECURITIES DESCRIBED IN THIS DISCLOSURE STATEMENT TO BE ISSUED PURSUANT TO THE PLAN WILL BE ISSUED WITHOUT REGISTRATION UNDER THE SECURITIES ACT, AS AMENDED, OR ANY SIMILAR FEDERAL, STATE, OR LOCAL LAW, GENERALLY IN RELIANCE ON THE EXEMPTIONS SET FORTH IN SECTION 1145 OF THE BANKRUPTCY CODE AND SECTION 4(A)(2) OF THE SECURITIES ACT OF 1933 (AS AMENDED, THE "SECURITIES ACT") OR REGULATION D OR REGULATION S PROMULGATED THEREUNDER, AS APPLICABLE.

TO THE EXTENT THAT THE PLAN PROPONENTS RELY ON A PRIVATE PLACEMENT EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT FOR THE OFFER AND ISSUANCE OF ANY SECURITIES, THOSE SECURITIES WILL BE SUBJECT TO RESTRICTIONS ON TRANSFER UNDER THE SECURITIES ACT AND MAY ONLY BE RESOLD OR OTHERWISE TRANSFERRED PURSUANT TO (A) AN EFFECTIVE REGISTRATION STATEMENT OR (B) AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION (THE "SEC") OR ANY STATE SECURITIES COMMISSION OR SIMILAR PUBLIC, GOVERNMENTAL, OR REGULATORY AUTHORITY. THIS DISCLOSURE STATEMENT HAS NOT BEEN FILED FOR APPROVAL WITH THE SEC OR ANY STATE AUTHORITY AND NEITHER THE SEC NOR ANY STATE AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE IN THE

UNITED STATES.

NEITHER THE SOLICITATION NOR THIS DISCLOSURE STATEMENT CONSTITUTES AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY SECURITIES IN ANY STATE OR JURISDICTION IN WHICH SUCH OFFER OR SOLICITATION IS NOT AUTHORIZED.

I. EXECUTIVE SUMMARY

A. Introduction

On March 7, 2023 (the "Petition Date"), Pach Shemen LLC ("Pach Shemen"), VR Global Partners, L.P. ("VR Global"), and Alpine Partners (BVI) L.P (collectively, the "Initial Petitioning Creditors") commenced chapter 7 cases against Eletson Holdings Inc. ("Eletson Holdings"), Eletson Finance (US) LLC ("Eletson Finance") and Agathonissos Finance LLC ("Eletson MI" and, together with Eletson Holdings and Eletson Finance, the "Debtors") by filing involuntary petitions (the "Involuntary Petitions") pursuant to section 303 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court" or the "Court"). The Involuntary Petitions were later joined by, among others, Gene B. Goldstein ("Goldstein") and Gene B. Goldstein in his capacity as Trustee of the Gene B. Goldstein and Francine T. Goldstein Family Trust ("Goldstein Trust", and together with Goldstein, "Mr. Goldstein"), Tracy Gustafson, Jason Chamness, Ron Pike, Mark Millet, in his capacity as Trustee of the Millet 2016 Irrevocable Trust (the "Millet 2016 Trust"), Mark Millet, in his capacity as Trustee of the Mark E. Millet Living Trust (the "Millet Living Trust"), and Robert Latter (collectively, the "Joining Creditors" and, together with the Initial Petitioning Creditors, the "Petitioning Creditors"). The Involuntary Petitions were also joined by NAF and the 2022 Notes Trustee (as defined below). *See* Docket Nos. 92 and 102.

By order of the Bankruptcy Court, on September 25, 2023 (the "Conversion Date"), the Debtors' cases were voluntarily converted, at the Debtors' request, to cases under chapter 11 of the Bankruptcy Code (these "Chapter 11 Cases"). The Petitioning Creditors other than Mr. Goldstein (collectively, the "Plan Proponents")[3] submit this Disclosure Statement to all Holders of Claims against the Debtors entitled to vote on the *Petitioning Creditors' Amended Joint Chapter 11 Plan of Reorganization of Eletson Holdings Inc. and its Affiliated Debtors*, a copy of which is attached hereto as **Appendix A** (as may be amended, supplemented, or otherwise modified from time to time, the "Plan").[4]

The purpose of this Disclosure Statement is to provide Holders of Claims entitled to vote on the Plan with adequate information to make an informed judgment as to whether to vote to accept or reject the Plan. The Plan Proponents are providing you with the information in this Disclosure Statement because you may be a creditor entitled to vote on the Plan. This Disclosure Statement is to be used solely in connection with evaluation of the Plan and not for any other purposes.

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[3] While Mr. Goldstein is a Petitioning Creditor and represented by Togut, Segal & Segal LLP, Mr. Goldstein is not a "Plan Proponent" for purposes of the Plan because of his role as a member of the Creditors' Committee (as defined below).

[4] Capitalized terms not otherwise defined in this Disclosure Statement have the meanings ascribed to such terms in the Plan.

To be counted, your ballot must be duly completed, executed, and **actually received** by 5:00 p.m. (prevailing Eastern Time) on [August] [5], 2024 (the "Voting Deadline"). Ballots may be delivered either via regular mail, courier, or delivery services to Kurtzman Carson Consultants, LLC dba Verita Global (the "Voting Agent") at the following address: Eletson Holdings Inc., *et al.*, Ballot Processing Center c/o KCC dba Verita, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245.

If you have any questions on the procedures for voting, please call the Voting Agent at: 888-647-1737(Domestic) or 310-751-2624 (International) or via email at EletsonBallots@kccllc.com.

As explained in greater detail below, the Plan Proponents believe that the Plan is in the best interests of creditors and other stakeholders and is a fair means of moving these Chapter 11 Cases toward efficient resolution. All creditors entitled to vote on the Plan are urged to vote in favor of it.

B. Material Terms of the Plan

After years of the Debtors avoiding their contractual obligations to their creditors, the Plan proposed by the Plan Proponents—certain Petitioning Creditors that filed and/or joined the Involuntary Petitions—finally restructures the Debtors and provides material returns to creditors consistent with their rights under the Bankruptcy Code and applicable law. The Plan provides a viable pathway for the Debtors to expeditiously emerge from these Chapter 11 Cases and is supported by their major creditors and constituents, including the Creditors' Committee (as defined below), following extensive good faith and arm's length negotiations that resulted in material changes to the Plan Proponents' previously filed version of the Plan.

The Debtors require significant new capital investment to: (i) pay the administrative costs and other expenses associated with these Chapter 11 Cases; (ii) fund distributions to creditors consistent with the Plan, and (iii) fund the costs and expenses of reorganized Eletson Holdings ("Reorganized Holdings"), including, but not limited to ordinary course business expenditures and the fees and expenses of pursuing the Retained Causes of Action preserved under the Plan. The Plan provides for the funding of these amounts through a Rights Offering (as defined below) made available to certain creditors that is fully backstopped by the Backstop Parties (as defined below).

OVERVIEW OF THE PLAN

For the convenience of Holders of Claims entitled to vote on the Plan, an overview of the Plan is set forth below. Parties entitled to vote on the Plan should review this Disclosure Statement, the Plan and the other solicitation materials approved by the Bankruptcy Court prior to casting a vote on the Plan and making any elections with respect to the Rights Offering.

- The Plan will be funded pursuant to an up to $43.5 million (the "Rights Offering Amount") equity rights offering (the "Rights Offering") that will provide Holders of General Unsecured Claims (including, but not limited to, 2022 Notes Claims and Old Notes Claims, but excluding Convenience Claims) with subscription rights (the "Rights Offering Subscription Rights"), to purchase up to 75% of the equity in Reorganized Holdings (the "Reorganized Equity") (subject to dilution on account of the Backstop Premium and the EIP (as defined below)), at a price that represents an implied 10.8% discount to the mid-point of the plan equity value of up to US$62,058,088.00.[5]

- The Rights Offering Amount is fully committed and backstopped by, one of the Petitioning Creditors, Pach Shemen (the "Initial Backstop Party"), pursuant to a backstop commitment agreement (the "Backstop Agreement"). The Backstop Agreement provides for, among other things, (i) the ability for certain General Unsecured Claimholders to join the Backstop Agreement as a "Backstop Party" (as defined below) and (ii) the Backstop Parties' commitment and obligation to purchase any Rights Offering Subscription Rights that are not purchased by General Unsecured Claimholders in connection with the Rights Offering. In exchange, each Backstop Party will receive, among other things, a backstop commitment premium in an aggregate amount equal to 8% of the Reorganized Equity issued and outstanding on the Effective Date (the "Backstop Premium"), subject to dilution on account of the EIP. The Backstop Premium shall be divided among the Backstop Parties in accordance with their Backstop Commitment (as defined in the Backstop Agreement).

- Any General Unsecured Claimholder that is eligible to purchase the Reorganized Equity issued pursuant to Section 5.9(b) of the Plan that desires to join the Backstop Agreement can do so by delivering a joinder to the Backstop Agreement and certain other information to counsel for the Petitioning Creditors by no later than ten (10) days following the Solicitation Commencement Deadline (as defined in the Rights Offering Approval Order (as defined below) (*i.e.*, [_____], 2024).[6]

- General Unsecured Claimholders that do not wish to participate in the Rights Offering will have the option to receive their Pro Rata Share of a

[5] The Rights Offering is anticipated to be conducted in reliance on the exemption from registration set forth in section 1145 of the Bankruptcy Code. If the Plan Proponents determine, in consultation with the Creditors' Committee, that section 1145 of the Bankruptcy Code is not available for all or any portion of the Rights Offering, then the issuance of Reorganized Equity in connection with the Rights Offering will be made pursuant to exemptions from registration under applicable securities laws.

[6] Detailed instructions on how to join the Backstop Agreement are set forth in the Part IV.E. below.

$13.5 million pool of cash (referred to as the "GUC Cash Pool").

- Holders of Allowed General Unsecured Claims that would otherwise be in Class 3 with a face amount of US$1,000,000 or less (or Holders of Allowed General Unsecured Claims that voluntarily elect to reduce their Claim amount to US$1,000,000) will be treated as Convenience Claims in Class 4 and will receive payment of such Claim in Cash in an amount equal to 15% of the face amount of such Holder's Allowed Convenience Claim; *provided that*, if the aggregate distributions to Holders of Allowed Convenience Claims exceeds US$2,500,000 (the "Convenience Claim Cap"), then Holders of such Claims shall receive their Pro Rata Share of the Convenience Claim Cap in Cash.

- The proceeds of the Rights Offering will be used to fund (i) the costs of consummation of the Plan, including, but not limited to, payments required to be made pursuant to the Plan including payment of Administrative Claims and priority Claims; (ii) funding of the GUC Cash Pool; and (iii) the costs and expenses of Reorganized Holdings, including, but not limited to, ordinary course business expenditures and the fees and expenses of pursuing the Retained Causes of Action preserved under the Plan.[7]

- The Plan provides for the issuance of 100% of the Reorganized Equity to General Unsecured Claimholders, subject to dilution on account of Reorganized Equity issued on account of the Rights Offering, the Backstop Premium, and an employee incentive plan for eligible employees of the Debtors' non-Debtor subsidiaries to be adopted and implemented by the new board of Reorganized Holdings (the "EIP"). Holders of Allowed General Unsecured Claims may elect to receive, and General Unsecured Claimholders that are unable to participate in the Rights Offering will be required to receive, their Pro Rata Share of Cash from the GUC Cash Pool.

- Pursuant to the Plan, Eletson Finance and Eletson MI will be dissolved on the Effective Date of the Plan, and the Plan will be administered through Reorganized Holdings.

ILLUSTRATIVE RECOVERY EXAMPLES

The following provides some illustrative hypothetical examples of what various Holders of Allowed General Unsecured Claims will recover under the Plan:

Example 1: A Holder of General Unsecured Claims (such as the Old

[7] The Plan does not provide for the release of any claims by the Debtors or their estates, or by any third parties. The Plan provides for certain usual and customary exculpation for certain parties. *See* Plan, 1.71 and 10.5.

Notes Claims or 2022 Notes Claims) in the amount of $175,000 will be treated in the Convenience Claims Class and receive a recovery equal to 15% of its Allowed Claim amount or $26,250; *provided* that if more than $16,666,667 in Claims elect treatment pursuant to the Convenience Claims Class, such Holder will receive its Pro Rata Share of $2,500,000.

Example 2: A Holder of General Unsecured Claims (such as the Old Notes Claims or 2022 Notes Claims) in the amount of $1,100,000 may choose either (a) to voluntarily reduce its Allowed Claim to $1,000,000 and be treated in the Convenience Claims Class (in which case it will receive $150,000 or its Pro Rata Share of the $2,500,000 as described in Example 1) or (b) treatment as a General Unsecured Claim in Class 3 (in which case it will have the option to receive either (i) its Pro Rata Share of the GUC Cash Pool (approximately $29,405.94) or (ii) its Pro Rata Share of 25% of the Reorganized Equity (subject to dilution) *plus* it will receive the right to participate in the Rights Offering and purchase its Pro Rata Share of up to 75% of the Reorganized Equity at a price that represents an implied 10.8% discount to the mid-point of the plan equity value of up to US$62,058,088.00.[8]

Example 3: A Holder of General Unsecured Claims (such as the 2022 Notes Claims) in the amount of $20,000,000 may choose either (a) to voluntarily reduce its Allowed Claim to $1,000,000 and be treated in the Convenience Claims Class (in which case it will receive $150,000) or (b) be treated as a General Unsecured Claim in Class 3 (in which case it will have the option to receive either (i) its Pro Rata Share of the GUC Cash Pool (approximately $534,653.47) or (ii) its Pro Rata Share of 25% of the Reorganized Equity (subject to dilution) *plus* it will receive the right to participate in the Rights Offering and purchase its Pro Rata Share of up to 75% of the Reorganized Equity at a price that represents an implied 10.8% discount to the mid-point of the plan equity value of up to US$62,058,088.00.

CERTAIN MATTERS RELATED TO THE REORGANIZED EQUITY

Holders of Allowed General Unsecured Claims that receive Reorganized Equity (including those Holders that elect to participate in the Rights Offering) will benefit from the net proceeds, if any, of Retained Causes of Action preserved under the Plan recovered by Reorganized Holdings or its non-Debtor subsidiaries. Such Retained Causes of Action include, among others, (a) claims against Levona Holdings Ltd. ("Levona") arising from the Arbitration (as defined below) or otherwise, (b) claims seeking to recover the Preferred Shares of Eletson Gas (each as defined below) or the value thereof from the Nominees (as defined below) and claims related thereto such as breach of fiduciary duty against the officers and directors that authorized the transfer of

[8] Solely for illustrative purposes, these examples use a total amount of General Unsecured Claims of $505 million. The actual figures are subject to change based on the Allowed amounts of General Unsecured Claims. For more information, see Part III.B.4. below.

such shares.[9] As of the date hereof, the Preferred Shares (as defined below) are estimated to have a total amount of outstanding obligations of approximately $333 million (including principal and accrued and unpaid dividends)[10] and the Retained Causes of Action against Levona was assessed pursuant to the Award (as defined below) in the amount of approximately $87 million (plus fees, costs, and interest).

The Plan Proponents believe that the Plan adequately capitalizes Reorganized Holdings, including Reorganized Holdings' ordinary course business operations in accordance with the Plan, and the fees and expenses of pursuing the Retained Causes of Action. The Rights Offering Amount is structured to provide Reorganized Holdings with a cash position upon emergence of at least US$5,000,000.00 on an assumed Effective Date of July 31, 2024 (the "Assumed Effective Date"), which is subject to change. Rights Offering proceeds that are not used to pay distributions under the Plan or fund the emergence cash position of US$5,000,000.00 will be returned to the Rights Offering participants. Cash needs under the Plan are uncertain and subject to change depending on, among other things, the number of Holders of General Unsecured Claims that elect to receive their Pro Rata Share of Cash from the GUC Cash Pool or that elect to be treated in the Convenience Claims Class, and the amount of Administrative Claims[11] that accrue through the Assumed Effective Date.

That said, recoveries, if any, on account of the Retained Causes of Action are highly uncertain and involve various costs and risks. If the pursuit of the Retained Causes of Action requires additional liquidity in the future, Reorganized Holdings may pursue various capital raising activities, including, but not limited to, certain transactions that may be dilutive to Holders of the Reorganized Equity. In the event additional funding is necessary to pursue litigation claims, the Initial Backstop Party is also willing backstop future capital raises for Reorganized Holdings to pursue the Retained Causes of Action preserved under the Plan.

If the Plan is not consummated, there can be no assurance that these Chapter 11 Cases will not be converted to a Chapter 7 liquidation. In a Chapter 7 liquidation, any distributions to creditors would be significantly delayed and reduced because of, among other things, the fees and expenses incurred in a liquidation under Chapter 7 of the Bankruptcy Code and the timeline for the liquidation of the Debtors' assets and distributions to creditors. Accordingly, if the Plan is not consummated, it is likely that creditors would realize lower recoveries on account of their allowed Claims

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[9] The Disclosure Statement does not provide an estimate of the likely outcomes of any such Retained Causes of Action, the costs and risks attendant to pursuing such claims, and the proceeds that might be realized (including after accounting for the risks of collectability, among other issues with enforcing any judgment).

[10] *See* Docket No. 591-1, page 24 of 102 n.3 and Docket No. 409.

[11] Administrative Claims include Claims for costs and expenses of administration of the Chapter 11 Cases, including Professional Fee Claims, U.S. Trustee Claims, fees under section 503(b) of the Bankruptcy Code (including the Petitioning Creditors' section 503(b)(3)(A) claims [Docket Nos. 265, 322], the 2022 Notes Trustee's section 503(b)(3)(A) claim [Docket No. 323], and New Agathonissos Finance's ("NAF") section 503(b)(3)(A) claim [Docket No. 324].

than they would have otherwise received under the Plan.

Accordingly, the Plan Proponents believe that the treatment of Holders of Claims in the Impaired Classes of Claims eligible to vote will receive a greater recovery for such Holders than would be available in a Chapter 7 liquidation or the plan proposed by the Debtors (the "Debtors' Plan"). Accordingly, the Plan Proponents believe that the Plan is in the best interests of Holders of Claims.

Thus, for the reasons discussed in this Disclosure Statement, the Plan Proponents urge you to return your Ballot accepting the Plan by the Voting Deadline.

II. OVERVIEW OF THE DEBTORS

A. Summary of the Eletson Business

1. *Corporate Organization*

The Debtors are Eletson Holdings and its wholly owned subsidiaries Eletson Finance, and Eletson MI. The Debtors are part of a collection of companies that operate under the name "Eletson." The Debtors' corporate organization chart as of the Petition Date is attached hereto as **Appendix B**, which also depicts certain direct and indirect non-Debtor subsidiaries described below.

Eletson has historically been a family-owned international seaborne transportation company focused on the transport of refined petroleum products, liquified petroleum gas and ammonia. Eletson owns and operates a fleet of medium-range double hull product tankers, which are capable of carrying a wide range of refined petroleum products, such as fuel oil and vacuum gas oil and gas oil, gasoline, jet fuel, kerosene and naphtha, as well as crude oil. The Debtors are headquartered in Piraeus, Greece and maintain offices all over the world, including Stamford, Connecticut, and London.

Eletson Holdings is the ultimate parent of the Eletson entities. Eletson operates its fleet through wholly-owned direct or indirect non-Debtor subsidiaries of Eletson Holdings who either (i) own title to the vessels comprising Eletson's fleet or (ii) charter the vessels of Eletson's fleet. The Eletson fleet is managed by non-Debtor subsidiary Eletson Corporation ("Eletson Corp"), another wholly owned subsidiary of Eletson Holdings. Eletson Corp is subject to management agreements with the various entities in exchange for management fees. The Eletson fleet currently includes 16 vessels, 12 of which are owned by Eletson Gas LLC ("Eletson Gas") and four of which are operated by wholly owned subsidiaries of Eletson Holdings.[12] *See* Docket No. 394 ¶ 12; *see also* Docket No. 394 ¶¶ 12-14. In addition to Eletson Corp and the various entities that directly own or charter and operate the vessels in Eletson's fleet, there are several defunct corporate entities with no operations within the Eletson corporate structure. Eletson Holdings serves as the guarantor for a number of its subsidiaries' obligations as described in greater detail herein. Each of the Debtors are holding

[12] "Owned" for these purposes means through finance leases or bareboat charters.

companies and do not maintain any ongoing operations or employ any employees outside of their officers and directors.

Eletson is closely held, controlled, and managed by three families: the Kertsikoff, Hadjieleftheriadis, and Karastamati families (the "Principal Families"). Each of those families beneficially hold approximately 30.7% of the equity in Eletson Holdings through separate Liberian trust companies. The remaining equity is beneficially held by two other families: the Zilakos and Andreoulakis families (the "Minority Families"). The three Principal Families and two Minority Families (collectively, the "Families") are all related. In addition to beneficially owning Eletson Holdings, members of the Families are also the directors and officers of Eletson Holdings and of its various subsidiaries, including Eletson Corp and Eletson Gas.

2. Eletson Gas and the Arbitration

Eletson Gas is a gas shipping company that was formed in 2013 as a joint venture between Eletson Holdings and funds managed by Blackstone Tactical Opportunities (collectively, "Blackstone"). Eletson Holdings holds 100% of the common shares of Eletson Gas. According to the Debtors, at the beginning of 2022, Eletson Gas directly or indirectly owned 14 liquefied petroleum gas carriers, collectively worth more than $400 million. Eletson Gas reported total revenues in 2022 of approximately $115 million.

Eletson Gas is organized as a limited liability company with common and preferred membership interests (the "Preferred Shares"). Holders of the Preferred Shares are entitled to distributions from the revenues of Eletson Gas before holders of the common shares of Eletson Gas (the "Common Shares"). Until November 2021, Blackstone held the Preferred Shares. Eletson Holdings held and still holds the Common Shares. In 2021, Blackstone sold its interest in Eletson Gas to Levona Holdings Ltd. ("Levona"), making Levona the holder of the Preferred Shares. Subsequently, on February 22, 2022, Levona entered into a "binding offer letter" with Eletson Gas (the "BOL"), which gave Eletson Gas the option, upon the satisfaction of certain conditions, for Eletson Gas or its nominee to purchase the Preferred Shares from Levona for specified consideration (the "Option").

A dispute arose as to whether Eletson Gas had exercised the Option, and accordingly, on July 29, 2022, Eletson Holdings and Eletson Corp commenced an arbitration proceeding against Levona seeking a ruling that Eletson Gas had exercised its Option as well as damages from Levona (the "Arbitration").

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the characterization of the preceding paragraph. In the Debtors' view, the "dispute" referenced above involved a number of claims asserted against Levona directly arising out of and relating to Levona's material breaches of the LLC Agreement of Eletson Gas, including actions taken by Levona against Eletson for the sole purpose of causing harm to Eletson. These actions include, fraud, bribing Eletson's CFO, improperly disclosing sensitive, non-public and confidential information, wrongfully interfering with Eletson Gas'

relationships with financiers, and the illegal arrest of Eletson Gas' ships, among other harmful actions."

On March 13, 2023, after the Petition Date, the Debtors filed a motion for relief from the automatic stay [Docket Nos. 5, 6], seeking leave to proceed with the Arbitration (the "Stay Relief Motion"). On April 17, 2023, the Bankruptcy Court entered a stipulation and order modifying the automatic stay to permit Eletson Holdings and Eletson Corp to pursue the Arbitration, including to determine the ownership of Preferred Shares [Docket No. 48] (the "Stay Relief Order"). Notably, the Stay Relief Motion did not disclose that the Preferred Shares had purportedly already been transferred to the Cypriot nominees (the "Nominees") that are owned by the Principal Families. Indeed, the Stay Relief Motion provided that if the Debtors (or any other party) prevailed in the Arbitration the Preferred Shares would be "returned to [Eleston] Gas or its nominee." Docket No. 6, at 4.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the assertions in the preceding paragraph. The Debtors state that as found in the Arbitration and subsequently confirmed by the District Court, the Preferred Shares were transferred to the Nominees pursuant to the BOL, effective as of March 11, 2022, well in advance of the filing of the Involuntary Petitions [Final Award at 96; District Court Order at 122-23]. Further, in the Debtors' view, the preceding paragraph fails to articulate that the Stay Relief Motion was necessary as the Involuntary Petitions were filed with the intention of staying the Arbitration and as a hedge against Levona's loss in the Arbitration."

On July 28, 2023, the arbitrator entered an interim award, which was superseded by a final award (the "Award") on September 29, 2023. The Award found that Eletson Gas had exercised the Option to acquire the Preferred Shares by, among other things, transferring shares in two vessels owned by Eletson Gas to Levona. The Award further found that the Preferred Shares were transferred to the Nominees on March 11, 2022. The Award also assessed almost $87 million in damages against Levona, plus fees, costs, and interest. None of those damages were awarded to Eletson Holdings. Instead, about half was awarded to the Nominees.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the assertions in the preceding paragraph. In the Debtors' view, the Award assessed (i) $43,455,122.21 in compensatory damages to Eletson Gas and the Nominees, (ii) $23,777,378.50 in punitive damages to Eletson Gas, (iii) $19,677,743.71 in punitive damages to the Nominees, and (iv) attorneys fees and costs "to the entity or individuals who paid those costs and fees," i.e., Eletson Corp [Final Award at 67, 99-101]."

On August 18, 2023, Eletson Holdings and Eletson Corp filed a petition in the United States District Court for the Southern District of New York (the "District Court") to confirm the Award. Among the findings they asked the District Court to approve is that the Preferred Shares were transferred to the Nominees. They also asked the District Court to approve, among other things, the Award of compensatory and punitive damages in favor of Eletson Gas and the Nominees.

On February 9, 2024, the District Court issued an opinion (the "District Court Opinion") that among other things, granted in part and denied in part Eletson Holdings' and Eletson Corp's petition to confirm the Award. The District Court confirmed the Award's finding that the Preferred Shares were transferred to the Nominees. However, the District Court Opinion provides that the Bankruptcy Court is the proper forum to "address the timing of the election by Eletson that the Preferred [Shares] should go to the Nominees and whether the Preferred [Shares] should be considered to be property of the estate or should be clawed back or avoided." District Court Opinion, at 89. The District Court Opinion vacated all awards for relief against the Pach Shemen (one of the Petitioning Creditors, a Plan Proponent, and the Initial Backstop Party, and is an affiliate of Levona), including compensatory and punitive damages based upon violations of the Status Quo Injunction (as defined in the District Court Opinion), all awards of attorneys' fees, costs, and expenses related to the Involuntary Petitions and the Bondholder Litigation (as defined in the District Court Opinion). *Id.* at 124-25. In accordance with the District Court Opinion, Eletson Holdings, Eletson Corp, and Levona each submitted proposed judgments on February 23, 2024. *See* District Court Docket Nos. 94 and 95.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the assertions in the preceding paragraph. In the Debtors' view, the District Court substantially confirmed the award of compensatory and punitive damages against Levona, vacating only the following limited aspects of the Final Award: (i) the finding that Murchinson and Pach Shemen are alter egos of Levona; (ii) the finding that the Status Quo Injunction remains in effect until confirmation of the Final Award by the Arbitrator; (iii) the finding that Levona caused or directed affiliates to purchase 2022 Notes for the purpose of wrongfully commencing and then actually causing the commencement of the Bondholder Litigation and the filing of the Involuntary Petitions against the Debtors; (iv) the finding that Levona wrongfully declared a default under the loan provided by Levona; (v) the award of attorneys' fees, costs and expenses relating to the involuntary bankruptcy petition and Bondholder litigation in the amount of $3,007,266.20; and (vi) the award of relief based upon violations of the Status Quo Injunction."

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "In the Debtors' view, the District Court vacated relief against Pach Shemen because Pach Shemen was not a signatory to the Eletson Gas LLC Agreement or a party to the Arbitration. However, the District Court explicitly noted that "Eletson may yet have the opportunity to seek to hold Murchinson and Pach Shemen responsible for Levona's obligations under the Award." [District Court Order at 82]."

On April 19, 2024, the District Court issued a memorandum and order (the "Memorandum and Order") remanding the Award to the arbitrator to clarify his findings regarding punitive damages (the "Remand"). *See* District Court Docket No. 106. The Memorandum and Order also directs Eletson Holdings, Eletson Corp, and Levona to submit a joint letter to the District Court within two weeks of any "substantive decision" of the arbitrator. *Id.*

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "In the Debtors' view, the District Court ordered the Arbitrator to address two questions. First, whether the arbitrator would not have awarded punitive damages, but for the finding of a violation of the Status Quo Injunction, and second, whether the arbitrator would have applied a different multiple of the compensatory damages in his calculation of the punitive damages award in the absence of the finding of a violation of the Status Quo Injunction."

On May 3, 2024, Levona filed a motion in the District Court seeking reconsideration of the Memorandum and Order and asking the District Court to vacate any punitive damages awarded (the "Motion for Reconsideration"). *See* District Court Docket Nos. 107 and 108. On May 8, 2024, Eletson Holdings and Eletson Corp filed a letter in the District Court that explained that while the arbitrator has set May 24, 2024 as the deadline for final letter briefs on the Remand, the arbitrator will not rule on the Remand until the District Court rules on the Motion for Reconsideration. *See* District Court Docket No. 109. On May 8, 2024, the District Court directed Eletson Holdings, Eletson Corp, and Levona to meet to confer on whether they agree to brief the Motion for Reconsideration on an expedited basis and to stay the Remand pending a decision on the Motion for Reconsideration. *See* District Court Docket No. 110. The District Court also directed the parties to provide an update on May 10, 2024. *See id.* On May 10, 2024, Eletson Holdings and Eletson Corp filed a letter in the District Court that provided, among other things, that the parties have not agreed to stay the Remand, "would oppose an indefinite stay", they intend to file their opposition to the Motion for Reconsideration on May 10, 2024, and the briefing schedule for the Remand. *See* District Court Docket No. 111. On May 10, 2024, Levona also filed a letter in the District Court that provided, among other things, that the parties have not agreed to stay the Remand and asked the District Court to stay the Remand pending resolution on the Motion for Reconsideration. *See* District Court Docket No. 112.

On May 10, 2024, Eletson Holdings and Eletson Corp filed its opposition to the Motion for Reconsideration in the District Court. *See* District Court Docket No. 113. On May 13, 2024, the District Court directed Levona to reply to Eletson Holdings' and Eletson Corp's opposition by May 15, 2024, and stayed the Remand pending resolution on the Motion for Reconsideration. *See* District Court Docket No. 114. On May 15, 2024, Levona filed its reply in support of the Motion for Reconsideration. *See* District Court Docket No. 115. On May 30, 2024, Eletson Holdings and Eletson Corp filed a letter that asked the District Court to lift the stay it imposed on the Remand on May 13, 2024. *See* District Court Docket No. 117. On June 3, 2024, Levona filed a letter in response requesting that the District Court to continue to stay the Remand. *See* District Court Docket No. 118. On June 12, 2024, the District Court entered an order granting in part and denying in part the Motion for Reconsideration. *See* District Court Docket No. 121.

B. The Debtors' Assets

On October 10, 2023, the Debtors filed their schedules of assets and liabilities and statements of financial affairs [Docket Nos. 216-221] (together, the "Original Schedules"). The Original Schedules disclosed that the Debtors have no cash and the Debtors' only assets are equity interests in various subsidiaries and certain

Litigation Claims (as defined below). The Original Schedules listed the value of the equity in each of the Debtors' subsidiaries as "$0."

On December 29, 2023, the Debtors filed an amended schedule A/B for Eletson Holdings [Docket Nos. 340] (the "Amended Schedules" and together, with the Original Schedules, the "Schedules"), disclosing an aggregate equity value of the Debtors' subsidiaries of $52.5 million. The Amended Schedules state that the $52.5 million valuation is based on "market value." At the section 341 meeting of the Debtors and their creditors held on January 5, 2024, however, the Debtors' Vice President stated that the $52.5 million number in the Amended Schedules was "book value" and that the actual value remains "unknown."

The Debtors' Schedules also identify certain Litigation Claims belonging to the Debtors' Estates, though the Schedules fail to identify these actions with specificity. Indeed, the Schedules merely state that the Debtors have "Claims against Wilmington Savings Fund Society, FSB", "Claims against Petitioning Creditors for Bad Faith Conduct," "potential Claims against various parties related to or arising from the Arbitration Award", and lastly, claims against Murchinson Ltd., Nomis Bay Ltd., and BPY Limited in these Bankruptcy Cases (collectively, the "Litigation Claims"). Further, the Debtors' Schedules do not state the nature of the Debtors' interest in the Litigation Claims.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the assertions in the preceding paragraphs and believe that the assertions above are misleading and mischaracterize the Debtors' reporting. The Debtors believe that the Schedules are a fair and accurate reporting of the Debtors' assets."

C. The Debtors' Liabilities

The Debtors' liabilities, based on the Debtors' books and records are set forth in their Schedules and the Debtors' Plan (as defined below). The Debtors' liabilities based on their prepetition capital structure can generally be summarized as (1) the Old Notes, (2) the 2022 Notes, (3) the OCM Guarantees, (4) the Azure Guarantees, (5) the Eletson Corp Guarantees, (6) the Initial Petitioning Creditors' Claims, and (7) Other Claims and Liabilities (each of which is defined and explained in greater detail below).

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the assertions in the following paragraphs. The Debtors assert that the summaries below provided by the Petitioning Creditors are misleading and omit material details. The Debtors encourage creditors to review the Debtors' Plan and related Disclosure Statement for a more accurate description of the Debtors' liabilities. Further the Debtors have filed a number of objections to the asserted liabilities listed below."

1. *The Old Notes*

In December 2013, Debtors Eletson Holdings and Eletson Finance co-issued First Preferred Ship Mortgage Notes (the "Old Notes" and the holders thereof, the "Old Noteholders") under an indenture dated December 19, 2013, in the aggregate principal amount of $300 million (the "Old Indenture"). Deutsche Bank Trust Company Americas (the "Old Notes Trustee") serves as the trustee for the Old Notes. The Old Notes had a maturity date of January 15, 2022.

In May 2018, Eletson Finance and Eletson Holdings initiated an exchange offer process for the Old Notes (the "2018 Note Exchange"), which closed in July 2018. Pursuant to the 2018 Note Exchange, approximately 98% of the Old Noteholders exchanged their Old Notes for the 2022 Notes (as defined below); approximately 2% of the Old Noteholders did not participate in the 2018 Note Exchange and retained their Old Notes.

The Debtors' Schedules list the Old Notes Trustee as having a disputed unsecured Claim against Eletson Finance for approximately $24,000. *See* Docket No. 220. However, the Old Notes Trustee filed a Proof of Claim against Eletson Holdings pursuant to the Old Notes for $5,953,704.07 for the unpaid principal amount of $300 million plus applicable interest, fees, and other charges. *See* Proof of Claim No. 2-1 against Eletson Holdings.

2. *The 2022 Notes*

On July 2, 2018, the Debtors entered into an indenture (the "2022 Indenture") pursuant to which the substantial majority of the Old Notes were exchanged for new First Preferred Ship Mortgage Notes due on January 15, 2022 (the "2022 Notes" and the holders thereof, the "2022 Noteholders"). The 2022 Notes were issued in an original face value amount of $314,068,360. Under the 2022 Indenture, Wilmington Savings Fund Society, FSB (the "2022 Notes Trustee") serves as trustee and collateral agent for the 2022 Notes. The 2022 Notes were secured by certain assets pledged as collateral (collectively, the "Collateral"), including, among other things: (i) all outstanding common shares or membership interests in Eletson Finance and certain guarantors under the 2022 Indenture; (ii) thirteen shipping vessels owned by guarantors under the 2022 Indenture (the "Note Vessels"); (iii) the earnings arising from freights, hires and other earnings from the operation and use of or relating to the Note Vessels, and (iv) all other cash and various accounts of Eletson MI and the guarantors set forth in the 2022 Indenture.

The Debtors concede that they breached their obligations under the 2022 Indenture long ago and, in fact, have "made no direct payments" under that contract, at any time. *See* Docket No. 41 ¶¶ 17, 64.

On June 24, 2019, in connection with their various breaches under the 2022 Indenture, the Debtors entered into a Restructuring Support Agreement (the "First RSA") with certain noteholders (the "Consenting Noteholders") including VR Global. As part of the First RSA and a consensual strict foreclosure executed in connection therewith, the Debtors transferred their interests in the 13 vessels that served as part of

the Collateral for the 2022 Notes to a new entity called NAF for the benefit of the 2022 Noteholders in partial satisfaction of amounts owed under the 2022 Indenture and the 2022 Notes in the amount of $130 million. On August 9, 2019, the Consenting Noteholders terminated the First RSA.

On October 29, 2019, after the termination of the First RSA, the Debtors and the Consenting Noteholders entered into a second Restructuring Support Agreement (the "Second RSA").[13] The purpose of the Second RSA was to accomplish an alternative restructuring of the Old Notes and the 2022 Notes on the terms and conditions set forth therein and in a restructuring term sheet attached as an Exhibit to the Second RSA. That restructuring was to be effectuated through an out-of-court consent solicitation and exchange offer or through a joint prepackaged plan of reorganization in chapter 11 cases to be filed by the Debtors in the United States.

Under the Second RSA, the Debtors agreed to implement the restructuring contemplated therein on a timeline with milestones set forth in Exhibit C to the Second RSA. The timeline included twelve (12) separate milestones, starting with the entry into a memorandum of agreement, in form and substance acceptable to Eletson and the Consenting Noteholders, with respect to the sale of Eletson's interest in a particular vessel—the Salamina—as soon as reasonably practicable but in no event later than October 31, 2019. The Debtors also agreed under the Second RSA that any proceeds from the sale of the Salamina after payment of applicable professional fees would be paid pro rata to the Old Noteholders, the 2022 Noteholders, and claims arising under certain "Working Capital Facility Agreements" outstanding at the time.

As the Debtors have acknowledged themselves, they never satisfied a single milestone under the Second RSA, in material breach of the Second RSA's requirement (and fundamental purpose) that the Debtors would effectuate the contemplated restructuring within several months. As the Debtors acknowledged in discovery during the pendency of the Involuntary Petitions, the parties to the Second RSA decided to go in a different path and abandoned the milestones. In addition, certain of the Consenting Noteholders told the Debtors in January 2020 that the Second RSA was "dead."[14]

Despite entering into the First RSA and the Second RSA, the Debtors never actually attempted to restructure the 2022 Notes or the Old Notes in connection therewith (or after). Instead, the Debtors did nothing and allowed the Old Notes and the 2022 Notes to mature without repayment on January 15, 2022, resulting in approximately $100 million in additional interest accruing on the 2022 Notes between the execution of the Second RSA in October 2019 and the filing of the Involuntary Petitions in March 2023.

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[13] The Debtors did not inform the 2022 Notes Trustee of their entry into the Second RSA despite their contractual obligation under the 2022 Indenture to do so.

[14] *Declaration of Joshua Nemser In Support of (A) Involuntary Petitions and (B) Petitioning Creditors' Objection to the Debtors' Motion to Dismiss* [Docket No. 128] filed on July 18, 2023 ¶ 14.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors dispute all of the allegations and assertions in this section. First, the Debtors asset that the Debtors made payments of PIK interest and undertook a tender offer which reduced the outstanding obligations under the 2022 Notes by approximately $8 million. Second, the Debtors assert that the Petitioning Creditors fail to state that as a result of the strict foreclosure agreement, the 2022 Indenture was amended to release all remaining Collateral that served as security under the 2022 Indenture. In the Debtors' view, the assertions regarding the Debtors' intent are meritless."

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "In the Debtors' view, the Petitioning Creditors' descriptions of the Second RSA are wholly deficient and omit material information regarding the terms and provisions of the Second RSA as well as its relationship to the Involuntary Petitions. As set forth in greater detail in the Debtors' Motion to Dismiss, pursuant to the Second RSA, signatories were restricted from selling, transferring, or assigning any interest they had in the 2022 Notes unless the transfer was to another holder of the 2022 Notes or the recipient joined the Second RSA. The Debtors further assert that in June 2020, well after the Second RSA was executed, the Debtors, more than seventy percent (70%) of the 2022 Noteholders, and others entered into a certain Stipulation Waiver and Release (the "OCM Financing Stipulation"), wherein a majority of the 2022 Noteholders acknowledged that they "[were] parties to that certain [Second RSA] . . . ." *OCM Financing Stipulation* at p. 1. The Debtors state that like the Second RSA, the OCM Financing Stipulation included a restriction on the transfer of the 2022 Notes. In the Debtors' view, any transfers of the 2022 Notes made in violation of the terms of these documents are void ab initio. In the Debtors' view, notwithstanding these transfer restrictions, the Initial Petitioning Creditors, in particular Pach Shemen, purport to be the beneficial holders of 2022 Notes in an amount that is mathematically impossible absent a transfer of 2022 Notes that were subject to restrictions on transfer. As the Second RSA was never terminated, the Debtors believe that Pach Shemen is not a valid 2022 Noteholder. The Debtors believe that had these bankruptcy proceedings not been initiated, the Debtors would have successfully refinanced their obligations in accordance with the terms of the relevant prepetition documents."

Each of the Debtors' Schedules list the 2022 Notes Trustee as having a disputed unsecured Claim against each of the Debtors for approximately $320,195,000. *See* Docket Nos. 216, 218, 220. However, the 2022 Notes Trustee filed a Proof of Claim against each of the Debtors pursuant to the 2022 Indenture and the 2022 Notes for approximately $366,011,815 for the unpaid principal amount of $194,862,074 plus applicable interest, fees, and other charges. *See* Proof of Claim No. 14 against Eletson Holdings; Proof of Claim No. 2 against Eletson MI; and Proof of Claim No. 2-2 against Eletson Finance. The 2022 Notes Trustee also filed a Proof of Claim against each of the Debtors pursuant to the 2022 Indenture and the 2022 Notes for fees and expenses in the amount of $1,872,764.44. *See* Proof of Claim No. 20 against Eletson Holdings; Proof of Claim No. 3 against Eletson MI; and Proof of Claim No. 3 against Eletson Finance.

3. *The OCM Guarantees*

Four subsidiaries directly or indirectly owned by Eletson Holdings are each party to bareboat charter agreements regarding the use of certain vessels owned by entities affiliated or associated with Oaktree Capital Management. Each of these vessels are described in greater detail below. The Petitioning Creditors understand that the $0 to $52.5 million figures from the Debtors' Amended Schedules are largely on account of these four bareboat charter arrangements.

Kinaros Charter. On June 24, 2020, OCM Maritime Rhine LLC ("OCM Rhine") entered into a bareboat charter agreement ("Kinaros Charter") with non-Debtor Kinaros Special Maritime Enterprise for the use of a vessel owned by OCM Rhine named the Kinaros. Pursuant to the Kinaros Charter, Kinaros Special Maritime Enterprise was obligated to make payments to OCM Rhine related to the charter of the Kinaros. The obligations were guaranteed by Eletson Holdings pursuant to that certain guarantee executed by Eletson Holdings in favor of OCM Rhine dated June 24, 2020 (the "Kinaros Guaranty"). Pursuant to the Kinaros Guaranty, Eletson Holdings guaranteed the full payment for all amounts due under the Kinaros Charter. According to the Debtors' Schedules, OCM Rhine has a disputed unsecured Claim against Debtor Eletson Holdings for $11,750,000. *See* Docket No. 216. According to OCM Rhine's Proof of Claim, as of the Conversion Date, the principal balance outstanding under the Kinaros Charter is $11,750,000 with outstanding payment-in-kind interest obligations of $217,417. *See* Proof of Claim No. 5-1 ¶ 9. As of the Conversion Date, OCM Rhine has not declared any event of default under the Kinaros Charter, however, the Chapter 11 Cases constitute a default under the Kinaros Guaranty.

Kimolos Charter. On June 24, 2020, OCM Maritime Yukon LLC ("OCM Yukon") entered into a bareboat charter agreement ("Kimolos Charter") with non-Debtor Kimolos II Special Maritime Enterprise for the use of a vessel owned by OCM Thames named the Kimolos. Pursuant to the Kimolos Charter, Kimolos II Special Maritime Enterprise was obligated to make payments to OCM Yukon related to the charter of the Kimolos. The obligations were guaranteed by Eletson Holdings pursuant to that certain guaranty executed by Eletson Holdings in favor of OCM Yukon dated June 24, 2020 (the "Kimolos Guaranty"). Pursuant to the Kimolos Guaranty, Eletson Holdings guaranteed the full payment for all amounts due under the Kimolos Charter. According to the Debtors' Schedules, OCM Yukon has a disputed unsecured Claim against Debtor Eletson Holdings for $12,450,000. *See* Docket No. 216. According to OCM Yukon's Proof of Claim, as of the Conversion Date, the principal balance outstanding under the Kimolos Charter is $12,450,000 with outstanding payment-in-kind interest obligations of $203,922. *See* Proof of Claim No. 6-1 ¶ 9. As of the Conversion Date, OCM Yukon has not declared any event of default under the Kimolos Charter, however, the Chapter 11 Cases constitute a default under the Kimolos Guaranty.

Fourni Charter. On June 24, 2020, OCM Maritime Autumn LLC ("OCM Autumn") entered into a bareboat charter agreement ("Fourni Charter") with non-Debtor Fourni Special Maritime Enterprise for the use of a vessel owned by OCM Autumn named the Fourni. Pursuant to the Fourni Charter, Fourni Special Maritime Enterprise was obligated to make payments to OCM Autumn related to the charter of

the Fourni. The obligations were guaranteed by Eletson Holdings pursuant to that certain guaranty executed by Eletson Holdings in favor of OCM Autumn dated June 24, 2020 (the "Fourni Guaranty"). Pursuant to the Fourni Guaranty, Eletson Holdings guaranteed the full payment for all amounts due under the Fourni Charter. According to the Debtors' Schedules, OCM Autumn has a disputed unsecured Claim against Debtor Eletson Holdings for $12,450,000. *See* Docket No. 216. According to OCM Autumn's Proof of Claim, as of the Conversion Date, the principal balance outstanding under the Fourni Charter is $12,450,000 with outstanding payment-in-kind interest obligations of $229,239. *See* Proof of Claim No. 7-1 ¶ 9. As of the Conversion Date, OCM Autumn has not declared any event of default under the Fourni Charter, however, the Chapter 11 Cases constitute a default under the Fourni Guaranty.

Kastos Charter. On June 24, 2020, OCM Maritime Thames LLC ("OCM Thames") entered into a bareboat charter agreement ("Kastos Charter") with non-Debtor Kastos Special Maritime Enterprise for the use of a vessel owned by OCM Thames named the Kastos. Pursuant to the Kastos Charter, Kastos Special Maritime Enterprise was obligated to make payments to OCM Thames related to the charter of the Kastos. The obligations were guaranteed by Eletson Holdings pursuant to that certain guaranty executed by Eletson Holdings in favor of OCM Thames dated June 24, 2020 (the "Kastos Guaranty"). Pursuant to the Kastos Guaranty, Eletson Holdings guaranteed the full payment for all amounts due under the Kastos Charter. According to the Debtors' Schedules, OCM Thames has a disputed unsecured Claim against Debtor Eletson Holdings for $12,450,000. *See* Docket No. 216. According to OCM Thames' Proof of Claim, as of the Conversion Date, the principal balance outstanding under the Kastos Charter is $12,450,000 with outstanding payment-in-kind interest obligations of $229,239. *See* Proof of Claim No. 8-1 ¶ 9. As of the Conversion Date, OCM Thames has not declared any event of default under the Kastos Charter, however, the Chapter 11 Cases constitute a default under the Kastos Guaranty.

The Debtors' Schedules list OCM Autumn, OCM Yukon, and OCM Thames as each having a disputed unsecured Claim against Debtor Eletson Holdings for $12,450,000, and OCM Rhine as having a disputed unsecured Claim for $11,750,000 (collectively, the "OCM Guaranty Claimants"). *See* Docket No. 216. As described above, although the OCM Guaranty Claimants have not declared an event of default under their respective charter agreements, each of the OCM Guaranty Claimants filed protective Proofs of Claims against Eletson Holdings for amounts owed by Eletson Holdings arising from and in connection with the bareboat charter agreements explained above. *See* Proof of Claim Nos. 5-8.

4. *The Azure Guarantees*

On August 24, 2017, Azure Nova Spring Co., Azure Nova Summer Co., Azure Nova Autumn Co., and Azure Nova Winter Co. (collectively, "Azure" or the "Azure Claimants") entered into bareboat charter agreements (collectively, the "Charters") with non-Debtors Antikeros Special Maritime Enterprise, Dhonoussa Special Maritime Enterprise, Polyaigos Special Maritime Enterprise and Strofades Special Maritime Enterprise (collectively, the "Azure Charterers") respectively, for the

use and operation of vessels owned by Azure named the Antikeros, Dhonoussa, Polyaigos, and Strofades, respectively (collectively, the "Azure Vessels").

Pursuant to the Charters, the Azure Charterers were obligated to make payments to Azure related to the charter of the Azure Vessels. The obligations were guaranteed by Eletson Holdings and Eletson Corp pursuant to those certain guarantees executed by Eletson Holdings and Eletson Corp in favor of each Azure entity dated August 24, 2017 (collectively, the "Azure Guarantees"). Pursuant to the Azure Guarantees, Eletson Holdings guaranteed the full payment for all amounts due under the Charters. As security for Eletson Holdings' obligations under the Azure Guarantees, Eletson Holdings executed a share pledge agreement in favor of each Azure entity pursuant to which the equity of the respective Azure Charterer was placed as collateral to secure the obligations under the applicable Charter.

In March 2021, the Charters were terminated and the Azure Vessels were repossessed. As a result of this termination and repossession, two arbitrations were commenced by Azure, one against the Charterers seeking a determination of any amounts owed to Azure because of the termination of the Charters and repossession of the Azure Vessels and a second against Eletson Holdings for any obligations arising from the Azure Guarantees which are asserted by Azure to be in an amount of no less than $94,799,702. Eletson Holdings disputes that defaults have occurred, or that obligations exist under the respective Azure Guarantees.

The Debtors' Schedules list the Azure Claimants as each having disputed unsecured Claims against Eletson Holdings for $12,000,000. *See* Docket No. 216. Each of the Azure Claimants filed a separate Proof of Claim against Eletson Holdings, each asserting a Secured Claim. However, the full amount listed in each Proof of Claim is asserted as an unsecured deficiency claim against Eletson Holdings for $94,799,702.40 in connection with the Charters. *See* Proof of Claim Nos. 9-12.

5. *The Eletson Corp Guarantees*

Non-Debtor Eletson Corp is the operational and technical management entity for various Eletson entities (including various of Eletson Holdings' non-Debtor subsidiaries). As Eletson Corp's parent entity, Eletson Holdings guaranteed certain obligations of Eletson Corp on a number of its unsecured obligations owed towards various banking entities in Greece, including Aegean Baltic Bank S.A., Alpha Bank S.A., and Piraeus Bank A.E.

The Debtors' Schedules list Aegean Baltic Bank S.A. as having a disputed unsecured Claim against Eletson Holdings for $4,000,019. *See* Docket No. 216. The Schedules list Piraeus Bank A.E. as having a disputed unsecured Claim against Eletson Holdings for $16,326,319. *See id*. Alpha Bank S.A. is also listed as having a disputed unsecured Claim against Eletson Holdings for $4,302,823. *See id.*

Aegean Baltic Bank S.A. filed a Proof of Claim against Eletson Holdings for $6,335,665.08 pursuant to a Eletson Corp guarantee for the unpaid principal of $5,555,514.40 plus applicable interest, fees, and other charges. *See* Proof of Claim No. 4. Hermes Acquisitions B DAC Serviced by Cepal Hellas also filed a Proof of Claim

pursuant to a Eletson Corp guarantee for claims purchased from Alpha Bank S.A., totaling $4,302,198.44. *See* Proof of Claim No. 16. Lastly, Sunrise I NPL Finance DAC also filed a Proof of Claim against Eletson Holdings pursuant to a Eletson Corp guarantee for claims purchased from Piraeus Bank A.E., totaling $23,402,504.90. *See* Proof of Claim No. 22. The Sunrise I NPL Finance DAC Proof of Claim asserts a secured claim in the amount of $7,000,000 and an unsecured claim in the amount of $16,402,504.90. *See id.*[15]

6. *Initial Petitioning Creditors' Claims*

Each of the Initial Petitioning Creditors filed protective Proofs of Claims against each of the Debtors in the amounts of $2,234,807.36, $357,567.10, and $2,431.10, respectively, pursuant to the *Second Application of the Petitioning Creditors Pursuant to Section 503(b)(3)(A) and 503(b)(4) of the Bankruptcy Code, for Allowance of Professional Fees,* filed on December 18, 2023 [Docket No. 322]. *See* Proofs of Claims Nos. 17-19 against Eletson Holdings; Proofs of Claims Nos. 4-6 against Eletson MI; and Proofs of Claims Nos. 4-6 against Eletson Finance.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the assertions in the preceding paragraph and the purported validity of any Proof of Claim filed by the Initial Petitioning Creditors."

7. *Other Claims and Liabilities*

The Debtors have other outstanding Claims from amounts owed to creditors prior to the Petition Date. Such amounts include, among other things, prepetition Claims by certain individual Old Noteholders (the "Individual Old Noteholder Claims"), NAF (the "NAF Claims") Levona (the "Levona Claim"), other miscellaneous scheduled claims (the "Miscellaneous Scheduled Claims"), and a prepetition tax Claim filed by the Internal Revenue Service (the "Tax Claim"). The Individual Old Noteholder Claims, NAF Claims, Levona Claim, and the Miscellaneous Scheduled Claims are explained in more detail below.

(a) The Individual Old Noteholder Claims

The Individual Old Noteholder Claims consist of the following and were not listed on the Schedules as Claims against any of the Debtors:

- Proof of Claim filed by Tracy Lee Gustafson against Eletson Holdings for bonds purchased in connection with the Old Notes totaling $117,978. *See* Proof of Claim No. 1;

[15] Proof of Claim No. 22 is based on three facility agreements, one of which included a first priority "prenotation of mortgage under articles 1274 et seq. of the Greek Civil Code, over an office property…in the amount of up to seven million Euro…the property is estimated to be worth approximately that amount." Proof of Claim No. 22 at 5.

- Proof of Claim filed by TR I/XII/W J. Fleishmnn/Dorette against Eletson Holdings for bonds purchased in connection with the Old Notes totaling $107,864.51. *See* Proof of Claim No. 3; and

- Proof of Claim filed by Middle East Shipping Agencies Overseas, Ltd. against Eletson Holdings for bonds purchased in connection with the Old Notes totaling $257,750 plus applicable interest, fees, and other charges. *See* Proof of Claim No. 15.

(b) NAF Claims

The NAF Claims consist of unsecured Claims against each of the Debtors for approximately $5,155,522. *See* Proof of Claim No. 13 against Eletson Holdings; Proof of Claim No. 1 against Eletson MI; and Proof of Claim No. 1 against Eletson Finance. The NAF Claims are based on amounts owed under the Old Notes and the Old Notes Trustee's fees and professional fees that the Old Notes Trustee had paid on behalf of the Debtors. *Id.* The Eletson Holdings Schedule lists the NAF Claim as a disputed unsecured Claim for $5,155,522 and separately, as a disputed unsecured Claim for $24,000 on the Eletson Finance Schedule. *See* Docket Nos. 216, 220.

(c) Levona Claim

The Levona Claim consists of an unsecured Claim for damages in connection with the facts related to the Arbitration and these Chapter 11 Cases, totaling $262,500,000, filed against Eletson Holdings. *See* Proof of Claim No. 21.

(d) Miscellaneous Scheduled Claims

Eletson MI's Schedules list Regus Management Group LLC as having a Claim against Eletson MI for $"741,70" in connection with an office lease. *See* Docket No. 218. Eletson Finance's Schedules list Thompson Hine LLP as having a Claim against Eletson Finance for $8,225 in connection with the provision of services. *See* Docket No. 220.

(e) Tax Claim

The Tax Claim consists of priority Claim in the amount of $313.23 and a general unsecured Claim in the amount of $319.97, both filed against Eletson Holdings for estimated amounts of unpaid corporate taxes. *See* Proof of Claim No. 23-1 filed against Eletson Holdings.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the asserted validity of each of the purported claims filed against the Debtors discussed in this subsection, many of which are subject to objections."

III. THE BANKRUPTCY CASES

A. The Involuntary Petitions and Related Cases

On the Petition Date, the Initial Petitioning Creditors filed the Involuntary Petitions against each of the Debtors. They were later joined by 11 additional petitioning creditors, including the 2022 Notes Trustee.[16] *See* Docket No. 102.

On April 14, the Debtors moved to dismiss the Involuntary Petitions [Docket No. 40], which was later supplemented at various points in response to additional creditors that filed joinders to the Involuntary Petitions [Docket Nos. 70, 108, 121, 122] (as supplemented, the "Motion to Dismiss"). Over the next few months, the Debtors and their creditors engaged in months of litigation, including discovery and related motion practice, resulting in millions of dollars in administrative expenses by the Debtors and fees and expenses incurred by their creditors in pursuing their contractual rights to repayment from the Debtors.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the assertions in the preceding paragraph. In the Debtors' view, Pach Shemen, the largest holder of 2022 Notes of the Initial Petitioning Creditors, obtained its claims against the Debtors mere months before filing the Involuntary Petitions. The Debtors believe that these claims were obtained in violation of the terms of the Second RSA and OCM Financing Stipulation, and that the filing of the Involuntary Petitions was an improper action taken in bad faith as part of a coordinated effort to harm the Debtors and provide a litigation advantage to Levona in the Arbitration. The Debtors have reserved all rights regarding the impropriety of the Involuntary Petitions."

Prior to the hearing on the Motion to Dismiss, upon the request of the Debtors, the Petitioning Creditors and the 2022 Notes Trustee, the Bankruptcy Court entered the *Order Appointing Hon. Allan L. Gropper (Ret.) as Mediator* [Docket No. 148] directing the parties towards a non-binding mediation (the "Initial Mediation") to address the issues surrounding the Motion to Dismiss. The Initial Mediation did not lead to any resolution. Just one day prior to the hearing on the Motion to Dismiss, the Debtors, the Petitioning Creditors, and the 2022 Notes Trustee entered into a stipulation which was read into the record on September 6, 2023 (the "Conversion Stipulation"). Pursuant to the Conversion Stipulation, the Debtors agreed to withdraw their Motion to Dismiss and voluntarily convert the pending Chapter 7 cases to cases under Chapter 11, and the Petitioning Creditors agreed not to object to the voluntary conversion. In

[16] The full list of creditors that filed the Involuntary Petitions and/or joined them are: Pach Shemen LLC, VR Global Partners, L.P., Alpine Partners (BVI), L.P., Gene B. Goldstein, Gene B. Goldstein, In His Capacity as Trustee of the Gene B. Goldstein and Francine T. Goldstein Family Trust, Mark Millet, In His Capacity as Trustee of the Mark E. Millet Living Trust, Mark Millet, In His Capacity as Trustee of the Millet 2016 Irrevocable Trust, Robert Latter, Tracy Lee Gustafson, Jason Chamness, Ron Pike, and NAF. Watson Farley & Williams LLP and Paleokrassas & Partners Law Firm (trading as Watson Farley & Williams Greece) (together, "WFW') former counsel to the Debtors, joined the Involuntary Petitions [Docket No. 61] but later withdrew after the Debtors paid WFW an undisclosed amount [Docket No. 101].

addition, pursuant to the Conversion Stipulation, the Debtors, the 2022 Notes Trustee, and the Petitioning Creditors agreed to, among other things, the following: (i) the Petitioning Creditors and the 2022 Notes Trustee would not file a motion to appoint an examiner, trustee, or limit exclusivity during the first 120 days of the Chapter 11 Cases; (ii) the Debtors agreed to withdraw adversary proceeding Case No. 23-1132 related to the filing of the Involuntary Petitions, without prejudice, and agreed not to reinitiate such a proceeding for the longer of four months or the end of the confirmation and vacatur proceedings concerning the Award; (iii) the Debtors' and Petitioning Creditors' professionals agreed not object to other professionals seeking retention as estate professionals; (iv) the Debtors' agreed not to object to a substantial contribution motion brought by the Petitioning Creditors seeking up to $1.5 million, with the express agreement that the Petitioning Creditors could seek additional amounts exceeding that sum; and (v) the Petitioning Creditors agreed not to object to or assert rights of recovery against the pre-petition fees sought by the Debtors' counsel of up to $2 million. *See* Sept. 6, Tr. at 9. Finally, the Conversion Stipulation was entered into without prejudice to all causes of action, claims, or defenses that the parties might thereafter assert, including, without limitation, the Debtors' rights to object to claims brought in the Chapter 11 Cases. *Id.*

On September 13, 2023, the Debtors filed a motion to convert the Chapter 7 cases [Docket No. 201], to which the Petitioning Creditors responded that a motion was unnecessary, and the cases should be converted immediately [Docket No. 203]. Following a hearing held on September 20, 2023, on September 25, 2023 the Bankruptcy Court entered an order converting the Chapter 7 cases to cases under Chapter 11 of the Bankruptcy Code [Docket No. 215] (the "Conversion Order").

B. Events in the Chapter 11 Cases

Since the entry of the Conversion Order, the Debtors did not file any first day motions. The limited filings made by the Debtors, as well as certain other material events in these Chapter 11 Cases, are described in greater detail below.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the characterization of the Debtors' filings in the preceding paragraph. The Debtors assert that the Debtors are holding companies without any ongoing operations, employees or bank accounts, and as such had no need to file any typical first day motions. Further, the Debtors state that the background and history of the Debtors as well as information regarding the Debtors' corporate structure was heavily litigated and discussed in the filings made prior to entry of the Conversion Order."

1. *Appointment of Creditors' Committee*

On October 20, 2023, the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed an official committee of unsecured creditors [Docket No. 233] (the "Creditors' Committee"). The Creditors' Committee is comprised of the following creditors: (a) Gene B. Goldstein, (b) Aegean

Baltic Bank S.A.,[17] and (c) the 2022 Notes Trustee. The Old Notes Trustee serves as an ex officio member.

2. *Estate Professionals*

Pursuant to orders of the Bankruptcy Court, the Debtors and the Creditors' Committee have retained certain professionals pursuant to sections 327 and 328 of the Bankruptcy Code (collectively, the "Estate Professionals"). The Debtors' only Estate Professional is Reed Smith LLP, as counsel [Docket Nos. 235 and 350]; the Creditors' Committee's Estate Professionals are (a) Dechert LLP, as counsel [Docket Nos. 273 and 351] and (b) FTI Consulting, Inc., as financial advisor [Docket Nos. 349 and 375].

By order dated February 7, 2024 [Docket No. 398] (the "Interim Comp Order"), the Bankruptcy Court established procedures for the Debtors' payment of certain of the fees and expenses of the Estate Professionals during the pendency of these Chapter 11 Cases, including pursuant to the filing of monthly fee statements and periodic interim fee applications. As of the date hereof, the following monthly fee statements have been filed:

- *First Monthly Fee Statement of Dechert LLP for the Period From October 25, 2023 Through November 30, 2023* [Docket No. 399] ("Dechert's First Fee Statement") seeking reimbursement of fees and expenses totaling $ 743,688.18;

- *Second Monthly Fee Statement of Dechert LLP for the Period From December 1, 2023 Through December 31, 2023* [Docket No. 400] ("Dechert's Second Fee Statement") seeking reimbursement of fees and expenses totaling $586,096.76;

- *Third Monthly Fee Statement of Dechert LLP for the Period From January 1, 2024 Through January 31, 2024* [Docket No. 433] ("Dechert's Third Fee Statement") seeking reimbursement of fees and expenses totaling $628,770.91;

- *Fourth Monthly Fee Statement of Dechert LLP for the Period From February 1, 2024 Through February 29, 2024* [Docket No. 529] ("Dechert's Fourth Fee Statement") seeking reimbursement of fees and expenses totaling $776,042.06;

- *Fifth Monthly Fee Statement of Dechert LLP for the Period From March 1, 2024 Through March 31, 2024* [Docket No. 609] ("Dechert's Fifth Fee Statement") seeking reimbursement of fees and expenses totaling $1,010,965.52;

[17] Aegean Baltic Bank S.A. has resigned as a member of the Creditors' Committee.

- *Sixth Monthly Fee Statement of Dechert LLP for the Period From April 1, 2024 Through April 30, 2024* [Docket No. 703] ("Dechert's Sixth Fee Statement") seeking reimbursement of fees and expenses totaling $1,083,448.33;

- *Seventh Monthly Fee Statement of Dechert LLP for the Period From May 1, 2024 Through May 31, 2024* [Docket No. 808] ("Dechert's Seventh Fee Statement" and together with Dechert's First Fee Statement, Dechert's Second Fee Statement, Dechert's Third Fee Statement, Dechert's Fourth Fee Statement, Dechert's Fifth Fee Statement, and Dechert's Sixth Fee Statement, the "Dechert Fee Statements") seeking reimbursement of fees and expenses totaling $737,128.66;

- *First Monthly Fee Statement of FTI Consulting, Inc. for the Period From December 8, 2023 Through December 31, 2023* [Docket No. 401] ("FTI's First Fee Statement") seeking reimbursement of fees and expenses totaling $233,115.77;

- *Second Monthly Fee Statement of FTI Consulting, Inc. for the Period From January 1, 2024 Through January 31, 2024* [Docket No. 434] ("FTI's Second Fee Statement") seeking reimbursement of fees and expenses totaling $600,417.73;

- *Third Monthly Fee Statement of FTI Consulting, Inc., for the Period From February 1, 2024 Through February 29, 2024* [Docket No. 530] ("FTI's Third Fee Statement") seeking reimbursement of fees and expenses totaling $334,953.94;

- *Fourth Monthly Fee Statement of FTI Consulting, Inc., for the Period From March 1, 2024 Through March 31, 2024* [Docket No. 610] ("FTI's Fourth Fee Statement") seeking reimbursement of fees and expenses totaling $407,858.63;

- *Fifth Monthly Fee Statement of FTI Consulting, Inc. for the Period From April 1, 2024 Through April 30, 2024* [Docket No. 704] ("FTI's Fifth Fee Statement") seeking reimbursement of fees and expenses totaling $815,339.24;

- *Sixth Monthly Fee Statement of FTI Consulting, Inc. for the Period From May 1, 2024 Through May 31, 2024* [Docket No. 809] ("FTI's Sixth Fee Statement" and together with FTI's First Fee Statement, FTI's Second Fee Statement, FTI's Third Fee Statement, FTI's Fourth Fee Statement, and FTI's Fifth Fee Statement, the "FTI Fee Statements") seeking reimbursement of fees and expenses totaling $588,325.27;

- *First Monthly Fee Statement of Reed Smith LLP, for the Period From January 1, 2024 Through January 31, 2024* [Docket No. 537] ("Reed Smith's First

Fee Statement") seeking reimbursement of fees and expenses totaling $957,875.36;

- *Second Monthly Fee Statement of Reed Smith LLP, for the Period From February 1, 2024 Through February 29, 2024* [Docket No. 541] ("Reed Smith's Second Fee Statement") seeking reimbursement of fees and expenses totaling $929,877.18;

- *Third Monthly Fee Statement of Reed Smith LLP, for the Period From March 1, 2024 Through March 31, 2024* [Docket No. 618] ("Reed Smith's Third Fee Statement") seeking reimbursement of fees and expenses totaling $2,004,475.75;

- *Fourth Monthly Fee Statement of Reed Smith LLP, for the Period From April 1, 2024 Through April 30, 2024* [Docket No. 702] ("Reed Smith's Fourth Fee Statement") seeking reimbursement of fees and expenses totaling $2,177,149.39; and

- *Fifth Monthly Fee Statement of Reed Smith LLP, for the Period From May 1, 2024 Through May 31, 2024* [Docket No. 810] ("Reed Smith's Fifth Fee Statement" and together with Reed Smith's First Fee Statement, Reed Smith's Second Fee Statement, Reed Smith's Third Fee Statement, and Reed Smith's Fourth Fee Statement, the "Reed Smith Fee Statements") seeking reimbursement of fees and expenses totaling $1,412,270.51.

As of the date hereof, the Debtors filed objections to the Dechert Fee Statements and the FTI Fee Statements. *See* Docket Nos. 431, 432, 464, 465, 563, 564, 633 634, 737, 738, 836, and 837. The Petitioning Creditors filed objections to the Reed Smith Fee Statements. *See* Docket Nos. 578, 659, and 729. The Creditors' Committee also filed objections to the Reed Smith Fee Statements. *See* Docket Nos. 577, 588, 660, and 731.

Pursuant to the Interim Comp Order, as of the date hereof, the following interim fee applications have been filed:

- *First Interim Fee Application for Dechert LLP for the Period from October 25, 2023 Through December 31, 2023* [Docket No. 417] ("Dechert's First Interim Fee Application") seeking interim allowance of fees and expenses totaling $1,329,784.94;

- *First Interim Fee Application of FTI Consulting, Inc. for the Period From December 8, 2023 Through December 31, 2023* [Docket No. 418] ("FTI's First Interim Fee Application") seeking interim allowance of fees and expenses totaling $233,115.77;

- *First Interim Fee Application of Reed Smith LLP, Counsel to the Debtors for the Period From September 25, 2023 Through December 31, 2023* [Docket No. 444] ("Reed Smith's First Interim Fee Application") seeking

interim allowance and payment of fees and expenses totaling $2,527,171.78; and

- *Second Interim Fee Application of Reed Smith LLP, Counsel to the Debtors and Debtors in Possession, for Compensation and Reimbursement of Expenses for the Period January 1, 2024 to April 30, 2024* [Docket No. 776] ("Reed Smith's Second Interim Fee Application") seeking interim allowance and payment of fees and expenses totaling $6,069,386.60.

- *Second Interim Fee Application of Dechert LLP for Compensation for Services Rendered and Reimbursement of Expenses as Counsel to the Official Committee of Unsecured Creditors for the Period From January 1, 2024 Through April 30, 2024* [Docket No. 788] ("Dechert's Second Interim Fee Application") seeking interim allowance and payment of fees and expenses totaling $3,471,835.00.

- *Second Interim Fee Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses as Financial Advisor to the Official Committee of Unsecured Creditors for the Period from January 1, 2024 through April 30, 2024* [Docket No. 789] ("FTI's Second Interim Fee Application") seeking interim allowance of fees and expenses totaling $1,939,040.00.

As of the date hereof, the Debtors objected to Dechert's First Interim Fee Application and to FTI's First Interim Fee Application. *See* Docket Nos. 485 and 486. On March 14, 2024, the Petitioning Creditors and the Creditors' Committee objected to Reed Smith's First Interim Fee Application. *See* Docket Nos. 484 and 487. On March 18, 2024, the U.S. Trustee objected to Dechert's First Interim Fee Application and to FTI's First Interim Fee Application. *See* Docket No. 492. On April 12, 2024, the Debtors filed an omnibus reply in support Reed Smith's First Interim Fee Application, and the Creditors' Committee filed replies in support of Dechert's First Interim Fee Application and FTI's First Interim Fee Application. *See* Docket Nos. 583, 585, 586.

Following a hearing held on May 8, 2024, on May 14, 2024, the Bankruptcy Court entered a first interim order granting 80% of the fees in Dechert's First Interim Fee Application, FTI's First Interim Fee Application, and the "bankruptcy" fees set forth in Reed Smith's First Interim Fee Application subject to a full reservation of rights for the final fee hearing. [Docket No. 676]. Also, on May 8, 2024, the Bankruptcy Court heard argument, and reserved decision, on Reed Smith's "arbitration" fees. On June 7, 2024, the Bankruptcy Court issued an oral decision approving Reed Smith's fees relating to the Arbitration, and on June 12, 2024, entered an order requiring that such fees be paid by non-Debtor Eletson Corp [Docket No. 769].

A hearing on Reed Smith's Second Interim Fee Application, Dechert's Second Interim Fee Application, and FTI's Second Interim Fee Application is scheduled for July 31, 2024, and objections are due on July 24, 2024. *See* Docket Nos. 776, 789, 788.

3. *Issues with the Debtors' Reporting Obligations*

(a) Schedules and Statements

Although the Conversion Date occurred on September 25, 2023, the Debtors failed to make any filings until October 10, 2023, when the Debtors filed the Original Schedules. *See* Docket Nos. 216-221. The Original Schedules were bereft of any detail, listing, for example, 73 subsidiaries each valued at $0, as well as the unvalued Litigation Claims against certain of the Petitioning Creditors. *See* Docket Nos. 2016 at 10-11 and 217 at 1-4, 11-27. It was not until December 29, 2023, over two months later—after the U.S. Trustee, the Creditors' Committee, and the Petitioning Creditors questioned those disclosures—that the Debtors filed the Amended Schedules, reducing the number of their disclosed subsidiaries to 60, but increasing the aggregate equity value in such subsidiaries from $0 to $52.5 million. *See* Docket No. 340 at 9-11.

(b) 2015.3 Reports

The Debtors did not file any Rule 2015.3 Reports (the "2015.3 Reports") until November 20, 2023, which was weeks late, and did so for only ten of their subsidiaries. *See* Docket No. 271.[18] Further, the Debtors initially failed to disclose a 2015.3 Report for Eletson Gas and, only after the U.S. Trustee demanded the Debtors do so, the Debtors filed a 2015.3 Report for Eletson Gas on November 30, 2023. *See* Docket No. 284 at 3. The Debtors did not file 2015.3 Reports for the remaining dozens of other subsidiaries until December 29, 2023. *See* Docket No. 341.

On February 12, 2024, the Debtors filed their second set of 2015.3 Reports. *See* Docket No. 409.

(c) Monthly Operating Reports

The Debtors have filed their monthly operating reports for the periods ending 9/30/2023, 10/31/2023, 11/30/2023, 12/31/2023, 1/31/2024, 2/29/2024, 3/31/2024, 4/30/2024, and 5/31/2024. [Docket Nos. 268-270, 276-277, 280, 325-327, 427-429, 508-510, 603-605, 706-708, and 804-806] (the "Monthly Operating Reports"). The Monthly Operating Reports fail to disclose intercompany balances. Certain of the Monthly Operating Reports also contain various inaccuracies, including stating that the Debtors had not retained counsel (which they had, *see supra* B.2) and that the Debtors

[18] Bankruptcy Rule 2015.3 requires, among other things, that the Debtors file "periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holders a substantial or controlling interest." Bankruptcy Rule 2015.3(a).

had not filed a chapter 11 plan or disclosure statement (which they had at the time, *see infra* C.1).

The Debtors' Monthly Operating Reports also state that the Debtors are not in compliance with their obligations to pay quarterly U.S. Trustee fees pursuant to 28 U.S.C. § 1930.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the allegations and characterizations of the Debtors' reporting obligations in these Chapter 11 Cases. The Debtors assert that as a threshold matter, the Debtors are current on all reporting obligations as noted by the Bankruptcy Court, and these filing contain accurate information to the best of the Debtors' knowledge. As previously stated, the Debtors have never taken the position that the Debtors have no assets, and filed "$0" on the Debtors' Schedules as the Debtors' assets were illiquid and of an undetermined value. The Debtors assert that the Debtors have disclosed all information required under the Bankruptcy Code and have repeatedly supplemented filings upon the request of parties in interest."

4. *The Bar Date and Claims Process*

(a) Bar Date and Claims

By order dated November 9, 2023 [Docket No. 264] (the "Bar Date Order"), the Bankruptcy Court established December 18, 2023 at 4:00 p.m. (prevailing Eastern Time) as the general bar date (the "General Bar Date") and March 25, 2024 at 4:00 p.m. (prevailing Eastern Time) as the governmental bar date (the "Governmental Bar Date").

As of the date hereof, approximately thirty-seven (37) Proofs of Claims were filed against the Debtors. After adjustments for duplicative Claims and other adjustments, the Petitioning Creditors estimate that Allowed General Unsecured Claims in these Chapter 11 Cases may range from approximately $505 million in a low scenario to $768 million in a high scenario. The low scenario of $505 million assumes allowance of the asserted amounts of the proofs of claims filed by the Old Notes Trustee ($5,953,704.07) [*see* Proof of Claim No. 2-1], the 2022 Notes Trustee ($366,011,815) [*see* Proof of Claim No. 14], the Azure Claimants ($94,799,702.40) [*see* Proof of Claim Nos. 9-12], Aegean Baltic Bank S.A., Alpha Bank S.A., and Piraeus Bank A.E, as the Eletson Corp Guarantee Claimants ($6,353,665.08, $4,302,198.44, and $23,402,504.90) [*see* Proof of Claims Nos. 4, 16, and 22], and NAF ($5,155,522) [*see* Proof of Claim No. 13]) but does not include the Levona Claim ($262,500,000) [*see* Proof of Claim No. 21-1]. The high scenario assumes all of these claims are allowed as well as the Levona Claim for a total of approximately $768 million. The actual allowed amount of General Unsecured Claims in these Chapter 11 Cases may vary.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the assertions in the previous paragraph to the extent that the Petitioning Creditors assert that any of the Claims asserted against the Debtors, other than those undisputed non-contingent

Claims scheduled by the Debtors, are valid claims entitled to payment in any amount or are otherwise enforceable against the Debtors and/or their estates. The Debtors believe that the estimates provided by the Petitioning Creditors above are incorrect and the actual range of allowed claims against the Debtors and their estates will be significantly lower."

(b) Claims Objections

On January 28, 2024, the Debtors filed several objections and omnibus objections to Proofs of Claims. Specifically, the Debtors objected to the Proofs of Claims filed by the Initial Petitioning Creditors [Docket No. 377] (the "Initial Petitioning Creditors' Claim Objection"), Levona [Docket No. 378] (the "Levona Claim Objection"), NAF [Docket No. 379] (the "NAF Claim Objection"), and the 2022 Notes Trustee [Docket No. 380] (the "2022 Notes Trustee Claim Objection"), as well as an omnibus objection to claims filed by the Individual Old Noteholders and the Old Notes Trustee, arguing that they are duplicative of the master Proofs of Claims filed by the Old Notes Trustee [Docket No. 376] (the "Omnibus Claim Objection" and collectively, with the Initial Petitioning Creditors' Claim Objection, the Levona Claim Objection, the NAF Claim Objection, and the 2022 Notes Trustee Claim Objection, the "Claims Objections").

At the Debtors' request, on February 12, 2024, the Bankruptcy Court approved an adjournment of all briefing and hearing dates and deadlines with respect to the Claims Objections pending further discussion at the February 27 Status Conference (as defined below). *See* Docket No. 405 (the "Adjournment Order"). A status conference on the Initial Petitioning Creditors' Claim Objection, the NAF Claim Objection, the 2022 Notes Trustee Claim Objection, and the Omnibus Claim Objection took place at a hearing on May 15, 2024 (the "May 15 Hearing"), along with the additional matters discussed herein. *See* Docket No. 635. A continued status conference on the Initial Petitioning Creditors' Claim Objection, the NAF Claim Objection, the 2022 Notes Trustee Claim Objection, and the Omnibus Claim Objection took place on June 18, 2024 (the "June 18 Hearing"). *See* Docket No. 710. The Bankruptcy Court scheduled an evidentiary hearing on the Initial Petitioning Creditors' Claim Objection, the NAF Claim Objection, the 2022 Notes Trustee Claim Objection, and the Omnibus Claim Objection for July 23, 2024 and if necessary, July 24, 2024. *See* Docket No. 735.

The Objection Deadline on Omnibus Claim Objection, the Initial Petitioning Creditors' Claim Objection, the NAF Claim Objection, and the 2022 Notes Trustee Claim Objection was May 7, 2024 [Docket No. 635], and the following responses were filed: the Old Notes Trustee filed a response to the Omnibus Claim Objection [Docket No. 637], the 2022 Notes Trustee filed a response to the 2022 Notes Trustee Claim Objection [Docket No. 639], which was joined by the Petitioning Creditors [Docket No. 645], the Initial Petitioning Creditors filed a response to the Initial Petitioning Creditors' Claim Objection [Docket No. 643], and NAF filed a response to the NAF Claim Objection [Docket No. 644].

At the May 31 Status Conference, the Bankruptcy Court adjourned the Levona Claim Objection to a date to be determined.

5. *The Motions for Appointment of a Chapter 11 Trustee*

(a) The UCC Trustee Motion

On February 6, 2024, the Creditors' Committee filed a motion for the appointment of a chapter 11 trustee [Docket No. 394] (the "UCC Trustee Motion"), which was joined by: (i) the Old Notes Trustee on February 12, 2024 [Docket No. 404]; (ii) the 2022 Notes Trustee on February 15, 2024 [Docket No. 420]; and (iii) the Petitioning Creditors on March 12, 2024 [Docket No. 477]. On March 12, 2024, Intrum Hellas Societe Anonyme Management of Receivables from Loans and Credits as the servicing claims manager for SUNRISE I NPL FINANCE DAC, filed a statement in support of the UCC Trustee Motion [Docket No. 476].

Pursuant to the Adjournment Order, the Bankruptcy Court adjourned all briefing and hearing dates and deadlines with respect to the UCC Trustee Motion pending further discussion at the February 27 Status Conference. At the February 27 Status Conference, the Bankruptcy Court scheduled the UCC Trustee Motion, among others, for a three-day trial that occurred on April 9, 2024 through April 11, 2024 (the "April 9 Trial"), and directed the parties to submit a Scheduling Order (as defined below). On March 22, 2024, the Debtors filed an omnibus objection to the Petitioning Creditors' Trustee Motion (as defined below) and the UCC Trustee Motion [Docket No. 513] (the "Omnibus Objection"). On March 22, 2024, the Nominees also filed an omnibus objection to the UCC Trustee Motion, the UST Trustee Motion (as defined below), and the Petitioning Creditors' Trustee Motion [Docket No. 518] (the "Nominees' Omnibus Objection"). On April 2, 2024, the Creditors' Committee filed a reply in support of the UCC Trustee Motion. *See* Docket No. 549. On April 2, 2024, the Petitioning Creditors filed a reply in support of the Trustee Motions (as defined below). *See* Docket No. 547.

(b) The UST Trustee Motion

On February 16, 2024, the U.S. Trustee filed a second motion for the appointment of a chapter 11 trustee [Docket No. 424] (the "UST Trustee Motion"), which was joined by the Petitioning Creditors on March 12, 2024 [Docket No. 477].

At the February 27 Status Conference, the Bankruptcy Court scheduled the UST Trustee Motion for the April 9 Trial. In accordance with the Scheduling Order, on March 22, 2024, the Debtors filed an objection to the UST Trustee Motion and the Nominees filed the Nominees' Omnibus Objection. *See* Docket Nos. 512 and 518. On April 2, 2024, the U.S. Trustee filed a reply in support of the UST Trustee Motion. *See* Docket No. 544. On April 2, 2024, the Petitioning Creditors filed a reply in support of the Trustee Motions. *See* Docket No. 547.

(c) Petitioning Creditors' Emergency Trustee Motion

On March 11, 2024, the Petitioning Creditors filed the *Petitioning Creditors' Emergency Motion to Appoint a Trustee* [Docket No. 468] (the "Petitioning Creditors' Trustee Motion" and, together with the UCC Trustee Motion, and the UST Trustee Motion, the "Trustee Motions"), which was also heard at the April 9 Trial. *See* Docket Nos. 480 and 481. On March 22, 2024, the Debtors filed the Omnibus Objection and the

Nominees filed the Nominees' Omnibus Objection. *See* Docket Nos. 513 and 518. On April 2, 2024, the Petitioning Creditors filed a reply in support of the Trustee Motions. *See* Docket No. 547.

6. *April 9 Trial*

The April 9 Trial on the Trustee Motions began on April 9, 2024 and concluded on April 11, 2024. On April 18, 2024, the Debtors', the Nominees, the U.S. Trustee, the Creditors' Committee, and the Petitioning Creditors each filed post-trial briefs in further support of their respective positions. *See* Docket Nos. 594-598.

On May 29, 2024, the Bankruptcy Court issued a memorandum opinion and order [Docket No. 721] (the "Trustee Decision") denying the Trustee Motions and finding that the various movants had not met the high burden of demonstrating (i) that cause existed for the appointment of a trustee and (ii) that the appointment of a trustee was in the best interests of parties in interest.

On June 12, 2024, the Creditors' Committee appealed the Trustee Decision to the U.S. District Court for the Southern District of New York. *See* Docket No. 768.

7. *DIP Financing*

At the February 27 Status Conference, counsel to the Creditors' Committee raised the issue that the Debtors had not paid the undisputed portion of the Creditors' Committee's professionals' fees (the "Outstanding Fees"). After further discussion at the February 27 Status Conference, the Bankruptcy Court directed the parties to provide an update to the Bankruptcy Court by February 29, 2024. On February 29, 2024, the Debtors filed a letter [Docket No. 443] stating that the Debtors intended to pursue Bankruptcy Court approval for a debtor-in-possession financing loan with undisclosed terms as of that time from a non-Debtor subsidiary, Eletson Gas, to pay the Outstanding Fees.

At a status conference on March 6, 2024, the parties discussed the foregoing fee issues, among other things, and the Bankruptcy Court directed the Debtors to share their proposed debtor-in-possession financing term sheet with the parties, and update the Bankruptcy Court by end of day on Friday, March 8, 2024. On Thursday, March 7, 2024, counsel for the Debtors provided counsel for the Creditors' Committee (and not the Petitioning Creditors) with a copy of a proposed term sheet for the Original DIP Facility (as defined below) mere hours before it was filed on the docket.

On March 7, 2024, the Debtors filed the *Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to Obtain Postpetition Financing (B) Granting Liens and Providing Superiority Administrative Expense Status (C) Modifying the Automatic Stay, (D) Scheduling a Final Hearing and (E) Granting Related Relief* [Docket No. 458] (the "DIP Motion") for approval of a senior secured, superpriority debtor-in-possession financing facility (the "Original DIP Facility") on the terms set forth in the Original DIP term sheet, attached to the DIP Motion as Exhibit C (the "Original DIP Term Sheet"). The proposed lender is "EMC Gas Corporation and such other of its affiliates that agree

to participate in the DIP Facility" (the "DIP Lender")—a subsidiary of Eletson Gas, which is itself a subsidiary of Eletson Holdings. Eletson Holdings owns 100% of the common stock of Eletson Gas and there is substantial overlap among their officers and directors.

On March 8, 2024, the Petitioning Creditors submitted a financing proposal to counsel for the Debtors that the Petitioning Creditors believed was significantly better for the Debtors and their estates (the "PC Proposal") than that set forth in the Original DIP Term Sheet.[19] Among other things, the PC Proposal is on an entirely *unsecured and administrative claims-only (not superpriority)* basis and provides substantially more liquidity ($10 million) for the Debtors than the grossly inadequate $4 million under the Original DIP Facility. The PC Proposal would also not result in a default if and when the Bankruptcy Court grants the pending Trustee Motions and, in the case of a default, would not permit the lender to foreclose on the Debtors' assets (as there is no collateral).

After the Petitioning Creditors delivered the PC Proposal to the Debtors, on March 15, 2024, the Debtors received a revised term sheet from the DIP Lender that was "economically identical" to the PC Proposal (the "Revised DIP Term Sheet"), which the Debtors "tentatively accepted." Docket No. 513, ¶ 45. As of the date hereof, the Revised DIP Term Sheet has not been filed with the Bankruptcy Court.

The Omnibus Objection provides that the Debtors' need for DIP financing was "resolved in the short term" and on March 17, 2024, the Debtors informed the Bankruptcy Court that they "were given consent by the financiers of the [special maritime entity subsidiaries ("SMEs")] to permit some portion of the funds held by the SMEs to be made available to [Eletson] Holdings as a dividend." *Id.* This "provided the Debtors with the requisite liquidity to immediately pay all outstanding and payable administrative expenses" including the Outstanding Fees. *Id.* The Omnibus Objection further provides that on March 18, 2024, counsel to the Creditors' Committee confirmed receipt of payment of the Outstanding Fees. *Id.*

On March 18, 2024, the Debtors adjourned the DIP Motion to the April 9 Trial. *See* Docket No. 494. The Omnibus Objection provides that the "Debtors are still evaluating whether they are still in need of the DIP Facility." Docket No. 513, ¶ 45. As of the date hereof, the U.S. Trustee objected to the DIP Motion.[20] *See* Docket No. 482. On March 28, 2024, the Debtors adjourned the DIP Motion to April 16, 2024. *See* Docket No. 539. On April 10, 2024, the Debtors adjourned the DIP Motion to May 8, 2024. *See* Docket No. 572. On April 26, 2024, the Debtors adjourned the DIP Motion to June 18, 2024. *See* Docket No. 619. On June 7, 2024, the Debtors withdrew the DIP Motion without prejudice. *See* Docket No. 758.

[19] The PC Proposal is attached to the Petitioning Creditors' Trustee Motion as Exhibit B.

[20] The Omnibus Objection provides that on "March 18, 2024 the [U.S. Trustee] stated that they had no objection to the DIP Facility and deferred to the Debtors' business judgment on the selection of unsecured postpetition facilities." Docket No. 513, ¶ 45.

8. *Vessel Arrest*

On May 2, 2024, the Creditors' Committee filed a letter (the "May 2 Letter"), informing the Bankruptcy Court that one of the vessels owned by the SMEs, which are wholly owned subsidiaries of Eletson Holdings may have been arrested (the "Vessel Arrest"). *See* Docket No. 630. The May 2 Letter provides that the Debtors did not inform the Creditors' Committee or the Bankruptcy Court of the Vessel Arrest until the Creditors' Committee and the Petitioning Creditors asked the Debtors. *See id.* ("[the Debtors confirmed that the vessel had been arrested in Freeport, Bahamas on April 25 and provided some information concerning the arrest.").

On May 3, 2024, the Debtors filed a response to the May 2 Letter (the "May 3 Letter"). *See* Docket No. 631. The May 3 Letter describes and attaches the information the Debtors provided to the Creditors' Committee regarding the Vessel Arrest, and states that the Debtors do not expect to suffer any damages as a result, among other things. *Id.* The May 3 Letter also provides that the claim that led to the Vessel Arrest was made by a former charterer, who is also the current charterer of two other SMEs. *Id.*

At a hearing held on other matters on May 8, 2024, the parties provided a further update on the Vessel Arrest and explained that the Vessel Arrest was only lifted after that former charterer paid into court its charter hire payments that it would otherwise have made for the two other SMEs. As a result of those payments, those two SMEs will not produce any earnings to Eletson Holdings for a month. The Debtors informed the Bankruptcy Court that they would continue to provide information about the impact of the Vessel Arrest.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the characterizations of the arrest and Debtors' communication with the Creditors' Committee. The Debtors assert that Counsel for Debtors was in contact with the Creditors' Committee regarding the vessel arrest on April 29, 2024, and provided updated and detailed reports from the officers of the Bareboat Charterer detailing the facts and circumstances concerning the arrest. The Debtors assert that the arrest did not relate to the performance of the vessel's voyage or carriage of cargo onboard. Instead, the Debtors assert that the arrest was brought by a previous charter of the vessel to obtain security for an old claim against the SME related to purported consequential delay damage related to the transit of the vessel through the Panama Canal in May 2023. The Debtors state that the arrest was dealt with swiftly and efficiently, without causing delay."

9. *The LCIA and BVI Proceedings*

On July 21, 2023, Levona filed a Request for Arbitration ("First RFA") in the London Court of International Arbitration ("LCIA") asserting claims as lender against Eletson Gas as borrower under an Intra-Group Loan Agreement dated March 11, 2022 and amended April 5, 2022. Levona subsequently filed a second Request for Arbitration ("Second RFA") against Eletson Gas on September 21, 2023 concerning the BOL which was also the subject of the JAMS Arbitration. The First RFA and Second

RFA were consolidated into one proceeding and discovery is currently under way.

On March 11, 2024, the Corp and Eletson Gas filed an application in the British Virgin Islands ("BVI") for a worldwide freezing order ("WFO") against Levona and Tropical Island International Ltd ("Tropical Island"). On March 14, 2024, the BVI Court granted the WFO against Levona and Tropical Island. Proceedings are ongoing.

C. The Debtors' Plan and Related Negotiations

1. *The Debtors' Unconfirmable, Insider "New Value" Plan*

Per the Conversion Stipulation, the Petitioning Creditors agreed, among other things, not to oppose or seek to terminate the Debtors' exclusive right to file a chapter 11 plan for the first 120 days after the Conversion Date.[21] In the Petitioning Creditors' opinion, during the 120 days post-conversion, the Debtors did nothing to progress these Chapter 11 Cases in good faith. The Debtors did not reach out to the Petitioning Creditors to discuss any form of consensual resolution of the Debtors' obligations, much less discuss a plan during the 120-day exclusivity period. The Petitioning Creditors understand that Debtors also refused to engage with the Creditors' Committee, even after instructed by the Bankruptcy Court to do so.

On January 23, 2024—the very last day of the Debtors' exclusivity period—the Debtors filed a proposed chapter 11 plan of reorganization [Docket No. 370] (the "Debtors' Initial Plan") and a related disclosure statement [Docket No. 371] (the "Debtors' Initial Disclosure Statement").

Under the Debtors' Initial Plan, creditors will receive almost no recoveries, while the Debtors' existing shareholders will retain their equity interests in Eletson Holdings despite the Debtors proposing to provide creditors almost no recoveries. The Debtors propose to fund their plan with an up to $10 million contribution by their existing shareholders in an undisclosed amount of cash and/or other assets (the "Initial Shareholder New Value Contribution"), which proposed funding was not subject to a market test or made available to any parties other than the Debtors' insiders.

On April 8, 2024—the eve of the April 9 Trial on the Trustee Motions, the Debtors filed an amended version of the Debtors' Initial Plan [Docket No. 570] (the "Debtors' Amended Plan").

The Petitioning Creditors' believe that neither the Debtors' Initial Plan nor the Debtors' Amended Plan was proposed in good faith. It is the Petitioning Creditors' view that the Debtors' Amended Plan is unconfirmable for at least four reasons. *First*, the Debtors' Amended Plan violates the absolute priority rule and bedrock bankruptcy principles and case law, including Supreme Court precedent, that shareholders cannot

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[21] Section 1121(b) of the Bankruptcy Code provides that "[e]xcept as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter." 11 U.S.C. § 1121(b). The initial 120-day exclusivity period is subject to extension by the Bankruptcy Court for "cause." 11 U.S.C. § 1121(d).

be given the exclusive right to invest new value in the debtor absent a market test. The Debtors' Amended Plan allows the Debtors' shareholders to retain their equity interests, unimpaired for a contribution of undisclosed cash and /or other assets with an aggregate value of $30 million (the "Amended Shareholder New Value Contribution" and together with the Initial Shareholder New Value Contribution, the "Shareholder New Value Contribution"). *Second*, the Debtors' Amended Plan violates the "best interests" of creditors test because nearly every single class of claims, if not all, would receive more in a hypothetical chapter 7 liquidation where 100% of the value of the Debtors would be available for creditors prior to shareholders receiving value on account of their interests. *Third*, the Debtors' Amended Plan impermissibly classifies general unsecured claims in a way that is designed to gerrymander an impaired accepting class of claims by separately classifying similar claims without a valid business purpose. *Fourth*, the Debtors' Amended Plan lacks any indicia of good faith, including that it has not been discussed with the Petitioning Creditors or the Creditors' Committee prior to filing and impairs classes of claims despite having the ability to keep them unimpaired. Additionally, the Debtors' Amended Plan would provide the Debtors' directors and officers with broad releases for both prepetition and postpetition conduct, through various exculpation and injunction provisions, even though the Creditors' Committee (and others) has identified material claims against the directors and officers. Finally, the Debtors' Amended Plan improperly caps the fees incurred by counsel to the Creditors' Committee.

The Debtors' Amended Plan was not accompanied by an amended disclosure statement, and it was not until April 26, 2024 that the Debtors filed an amended version of the Debtors' Initial Disclosure Statement [Docket No. 621] (the "Debtors' Amended Disclosure Statement").

On May 13, 2024, the Debtors filed further amended versions of the Debtors' Amended Plan [Docket No. 671] (the "Debtors' Second Amended Plan") and the Debtors' Amended Disclosure Statement [Docket No. 672] (the "Debtors' Second Amended Disclosure Statement"). On May 14, 2024, the Debtors filed a valuation analysis [Docket No. 687] (the "Debtors' Valuation Analysis"). Just like the Debtors' prior filings, the Petitioning Creditors believe that the Debtors' Second Amended Plan was not proposed in good faith and the Debtors' Second Amended Disclosure Statement lacks adequate information for creditors to cast an informed vote. The Debtors' Second Amended Disclosure Statement still does not contain any financial projections. There are also conclusory explanations that the Petitioning Creditors believe are inconsistent with the facts about how the Debtors "marketed" financing opportunities for their plan and "negotiated" the Shareholder New Value Contribution with their shareholders and insiders. The Debtors' Second Amended Plan also appears to have materially reduced creditors' recoveries by providing for a "Gas Ownership Settlement" that expressly provides that the Debtors' contemplated litigation trust will not include any claims or causes of action against Levona and permits the Gas Ownership Defendants (defined as Eletson Gas, the Nominees, and/or any officers or directors of the same) to settle not only potentially valuable claims against Levona but also the claims and causes of action in connection with the transfer of the Gas Preferred Shares. These provisions are not explained in the Debtors' Second Amended Disclosure Statement, were made without any negotiation with the Debtors' creditors, and are further evidence of the Debtors' bad faith.

When the Debtors' filed the Debtors' Initial Plan and the Debtors' Initial Disclosure Statement, the Debtors also filed a motion for approval of the Debtors' Initial Disclosure Statement and procedures for the solicitation of votes with respect to the Debtors' Initial Plan [Docket No. 372] (the "Debtors' Solicitation Motion"). The Debtors' Solicitation Motion was scheduled to be heard at the May 15 Hearing. *See* Docket No. 635 and 655. On May 9, 2024, Levona and the Petitioning Creditors filed objections to the Debtors' Solicitation Motion, which the Debtors replied to on May 13, 2024. *See* Docket Nos. 648, 651, 668, and 670. Pursuant to the Debtors' request, the Bankruptcy Court extended the Creditors' Committee's objection deadline on the Debtors' Solicitation Motion to May 13, 2024 at 4:00 p.m. *See* Docket No. 650. On May 13, 2024, the Creditors' Committee filed an objection and reservation of rights to the Debtors' Solicitation Motion [Docket No. 669], which was joined by the 2022 Notes Trustee [Docket No. 674], and which the Debtors' replied to May 14, 2024. *See* Docket No. 686.

On May 14, 2024, the Debtors' filed a revised proposed order approving the Debtors' Solicitation Motion. *See* Docket No. 690.

At the May 15 Hearing, the Bankruptcy Court considered the Debtors' Solicitation Motion, in addition to the other matters, and continued the May 15 Hearing to give the Debtors an opportunity to revise the Debtors' Second Amended Plan and the Debtors' Second Amended Disclosure Statement to address various issues raised at the May 15 Hearing.

On May 30, 2024, the Bankruptcy Court scheduled a status conference for May 31, 2024 [Docket No. 723] (the "May 31 Status Conference"). The morning of the May 31 Status Conference, the Debtors filed further amended versions of the Debtors' Second Amended Plan [Docket No. 725] (the "Debtors' Revised Second Amended Plan") and the Debtors' Second Amended Disclosure Statement [Docket No. 726] (the "Debtors' Revised Second Amended Disclosure Statement"). Just like the Debtors' prior filings, the Petitioning Creditors believe that the Debtors' Revised Second Amended Plan was not proposed in good faith and the Debtors' Revised Second Amended Disclosure Statement lacks adequate information for creditors to cast an informed vote. The Debtors' Revised Second Amended Disclosure Statement contains conclusory and misleading statements about how the Debtors negotiated the "Collections Contribution" and the Shareholder New Value Contribution, among other things.[22] The Debtors' Revised Second Amended Disclosure Statement also does not clearly explain the Retained Causes of Action Contribution or the Excess SME Proceeds concept, which impacts creditors' recoveries under the Debtors' Revised Second Amended Plan.

[22] The Creditors' Committee believes that the likelihood that the Debtors collect the full value of the Award is low. The Creditors' Committee acknowledges that Levona may only have assets sufficient to partially satisfy the Award. The Creditors' Committee believes that the cumulative execution risks and costs of collection weigh against the Debtors' view that $50 million may be returned to the Litigation Trust on account of the Award.

On June 6, 2024, the Debtors filed further amended versions of the Debtors' Revised Second Amended Plan and the Debtors' Revised Second Amended Disclosure Statement. *See* Docket Nos. 744 and 746.

On June 12, 2024, the Petitioning Creditors and the Creditors' Committee (joined by the 2022 Notes Trustee) each filed supplemental objections to the Debtors' Solicitation Motion [Docket Nos. 771, 772 and 773] (the "Supplemental DS Objections"). In general, the Supplemental DS Objections argue that the Debtors' further revised disclosure statements continue to lack "adequate information" and describe a chapter 11 plan that is patently unconfirmable. As such, the Supplemental DS Objections request that the Court deny the Debtors' Solicitation Motion and reject the Debtors' request to solicit their plan. On June 14, 2024, the Debtors filed a reply to the Supplemental DS Objections. *See* Docket No. 785. On June 14, 2024, the Debtors filed further amended versions of the Debtors' Revised Second Amended Plan and the Debtors' Revised Second Amended Disclosure Statement. *See* Docket Nos. 786 and 787.

At the June 18 Hearing, the Bankruptcy Court granted the Debtors' Solicitation Motion, and directed the Debtors and the Petitioning Creditors to submit a joint solicitation order to the Bankruptcy Court. At the June 18 Hearing, the Bankruptcy Court also directed the Debtors to add additional disclosures to the Debtors' Revised Second Amended Disclosure Statement. On July 5, 2024, the Debtors filed solicitation versions of the Debtors' Revised Second Amended Plan and the Debtors' Revised Second Amended Disclosure Statement. *See* Docket Nos. 839 and 840.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the characterization of the various iterations of the Debtors' Plan and associated Disclosure Statements. The Debtors assert that as a threshold issue, the assertion that the Debtors' Plan is patently unconfirmable as an unmarketed new value plan is a conclusion of law that is without merit and contrary to the facts of these Chapter 11 Cases. As noted by the Bankruptcy Court, the Debtors made the affirmative decision to allow the exclusivity period to expire to market test the Debtors' Plan in accordance with settled case law. It is the Debtors' view that as both the Debtors and the Petitioning Creditors have made significant changes to their plans and increased the value provided to creditors, it is clear the Debtors' marketing process is working. In the Debtors' view, the assertion that the Debtors' Plan was not proposed in good faith is equally meritless. In the Debtors' view, the Debtors have engaged in good faith with parties in interest in these Chapter 11 Cases, including the Creditors' Committee, to materially improve the terms of the Debtors' Plan and increase the recovery for Creditors entitled to a recovery under the Debtors' Plan. The Debtors encourage all Creditors to review the terms of the Debtors' Plan and associated Disclosure Statement for an accurate description of the terms of the Debtors' Plan, a more fulsome and accurate description of the Debtors' plan process and an understanding of the recovery creditors would be entitled to under the Debtors' Plan."

2. *The Petitioning Creditors' Motion to Terminate Exclusivity*

On January 29, 2024, the Petitioning Creditors filed a motion to terminate the Debtors' exclusivity period [Docket No. 384] (the "Exclusivity Termination

Motion"), which was joined by the 2022 Notes Trustee [Docket No. 419]. On March 12, 2024, the Creditors' Committee filed a statement in support of the Exclusivity Termination Motion [Docket No. 473]. The Exclusivity Termination Motion argues that the Debtors forfeited exclusivity by filing the Debtors' Initial Plan, which is an unconfirmable new value plan (*id.* at 18), and that even if the Debtors had not filed an unconfirmable new value plan, termination is warranted under the *Adelphia* factors (*id*. at 19-29). The Exclusivity Termination Motion also argues that the Debtors have repeatedly demonstrated that they have no intention of advancing these Chapter 11 Cases to a good faith resolution. *Id*. at 18, 22.

Pursuant to the Adjournment Order, the Bankruptcy Court adjourned all briefing and hearing dates and deadlines with respect to the Exclusivity Termination Motion pending further discussion at the February 27 Status Conference. At the February 27 Status Conference, the Bankruptcy Court scheduled the Exclusivity Termination Motion for the April 9 Trial.

On March 25, 2024, the Debtors' exclusivity periods expired under the Bankruptcy Code without the Debtors seeking any extension.

3. *Mediation*

On February 13, 2024, the Debtors filed a motion to compel mediation regarding the Debtors' Initial Plan and other issues affecting these Chapter 11 Cases [Docket No. 412] (the "Motion to Compel Mediation"). On February 14, 2024, the Petitioning Creditors and the Creditors' Committee each filed letters in response to the Motion to Compel Mediation [Docket Nos. 414 and 415]. The Petitioning Creditors asserted that the Motion to Compel Mediation was unnecessary, intended to create additional delay and cost, and the timing of the filing was further indication of the Debtors' lack of good faith in participating in the mediation. Nevertheless, the Petitioning Creditors indicated that they were ready, willing, and able to participate in mediation as soon as possible. The Creditors' Committee agreed with the Petitioning Creditors, and further suggested that the parties use the time leading up to the February 27 Status Conference to explore "whether it would be feasible to reach a mediated resolution of these cases" and proposed that Judge Allan L. Gropper, (Ret.) who previously presided over the Initial Mediation of these parties in September 2023, serve as the mediator. *See* Docket No. 415 at 1.

On February 15, 2024, the Bankruptcy Court adjourned all briefing and hearing dates and deadlines with respect to the Motion to Compel Mediation pending further discussion at the February 27 Status Conference. At the February 27 Status Conference, the Bankruptcy Court directed the parties to participate in the Chapter 11 Mediation (as defined below).

4. *February 27 Status Conference*

In accordance with the Bankruptcy Court's Adjournment Order entered on February 12, 2024, the parties met and conferred regarding a joint status report setting forth their respective positions, which status report was filed on February 26, 2024 [Docket No. 435]. At the status conference held on February 27, 2024 (the

"February 27 Status Conference"), the Bankruptcy Court directed the parties to mediate (the "Chapter 11 Mediation") before Judge Allan L. Gropper, (Ret.) (the "Mediator"). On March 13, 2024, the Bankruptcy Court entered the order re-appointing the Mediator [Docket No. 479] (the "Mediation Order"), which directed the Debtors, the Petitioning Creditors, the Creditors' Committee, the Nominees, Levona, the 2022 Notes Trustee, Eletson Corp, and Eletson Gas to mediate the Mediation Matters (as defined in the Mediation Order). The Chapter 11 Mediation began on March 27, 2024. The Chapter 11 Mediation continued thereafter. While the parties negotiated and engaged in the Chapter 11 Mediation in good faith, the parties were not able to reach settlement on the Mediation Matters.

At the February 27 Status Conference, the Bankruptcy Court also scheduled the April 9 Trial on the UCC Trustee Motion, the UST Trustee Motion, and the Exclusivity Termination Motion. On March 8, 2024, the Bankruptcy Court entered the scheduling order on the UCC Trustee Motion, the UST Trustee Motion, and the Exclusivity Termination Motion [Docket No. 467] (the "Scheduling Order"), which set March 22, 2024 as the objection deadline and April 2, 2024 as the reply deadline on the UCC Trustee Motion, the UST Trustee Motion, and the Exclusivity Termination Motion.[23] *See* Docket No. 467.

5. *Expiration of Exclusivity*

On March 25, 2024, the Debtors' exclusivity periods expired under the Bankruptcy Code without the Debtors seeking any extension. Accordingly, on March 26, 2024, the Petitioning Creditors as Plan Proponents filed a prior version of the Plan and Disclosure Statement. *See* Docket Nos. 531 and 532.

On April 10, 2024, the Petitioning Creditors filed a motion for approval of the prior Disclosure Statement and procedures for the solicitation of votes with respect to a prior version of the Plan [Docket No. 574] (the "Petitioning Creditors' Solicitation Motion"). The Petitioning Creditors' Solicitation Motion was heard at the May 15 Hearing. *See* Docket No. 632 and 656. On May 9, 2024, the Debtors filed an objection to the Petitioning Creditors' Solicitation Motion, which the Petitioning Creditors replied to on May 13, 2024. *See* Docket Nos. 653 and 667. On May 14, 2024, the Creditors' Committee filed a statement in support of the Petitioning Creditors' Solicitation Motion. *See* Docket No. 689. No other parties filed any pleadings with respect to the Petitioning Creditors' Solicitation Motion.

D. The Petitioning Creditors' Plan and Related Negotiations

Following the expiration of the Debtors' exclusivity periods, on March 26, 2024, the Plan Proponents filed an initial version of the Plan [Docket No. 531] (the "PC Initial Plan") and related disclosure statement [Docket No. 532]. Following the filing of the PC Initial Plan, the Plan Proponents and their advisors engaged in substantial negotiations with various creditors and constituents in these Chapter 11 Cases,

[23] Subsequently, the Petitioning Creditors' Trustee Motion and the DIP Motion were scheduled to be heard at the April 9 Trial. *See* Docket Nos. 481 and 494.

including the Creditors' Committee and their advisors, among others. Following these discussions, on May 10, 2024, the Plan Proponents filed a *Notice of Filing of (1) Anticipated Modifications to the Petitioning Creditors' Joint Chapter 11 Plan of Reorganization of Eletson Holdings Inc. and its Affiliated Debtors and (2) Certain Appendices Related to the Petitioning Creditors' Disclosure Statement Related Thereto* [Docket No. 658]. On May 13, 2024, the Plan Proponents filed an amended version of the Plan and an amended Disclosure Statement.

On May 14, 2024, the Plan Proponents filed further amended versions of the Plan and the amended Disclosure Statement [Docket Nos. 695 and 696]. Among other things, the Plan and Disclosure Statement contain a number of significant changes from that set forth in the PC Initial Plan, such as:

- Decreasing the Backstop Premium from 10% to 8%;
- Increasing the GUC Cash Pool from US$12,500,000 to US$13,500,000;
- Increasing the Convenience Claim Threshold Amount from US$200,000 to US$1,000,000;
- Increasing the Convenience Claim Cap from US$1,000,000 to US$2,500,000
- Increasing the recovery percentage for Holders of Allowed Convenience Claims from 10% to 15%;
- Giving all General Unsecured Claimholders the option to become Backstop Parties; and
- Establishing the composition of the New Board and certain governance matters relating thereto.

The key terms of the Plan, including creditors' estimated recoveries are summarized below.

At the May 15 Hearing, the Bankruptcy Court approved the Petitioning Creditors' Solicitation Motion and the Rights Offering Procedures Motion (as defined below), but declined to enter the orders approving the respective motions until the Debtors addressed the various issues raised at the May 15 Hearing on the Debtors' Second Amended Plan and the Debtors' Second Amended Disclosure Statement.

At the May 31 Status Conference, the parties discussed the Debtors' Revised Second Amended Plan and the Debtors' Revised Second Amended Disclosure Statement and the Bankruptcy Court continued the hearing on the Debtors' Revised Second Amended Disclosure Statement to June 7, 2024. *See* Docket No. 736. The Bankruptcy Court also directed the parties to submit a joint status report to the Bankruptcy Court on June 6, 2024. *Id.*

On June 6, 2024, the Plan Proponents filed further amended versions of the Plan and the amended Disclosure Statement [Docket Nos. 740 and 741]. On June 17, 2024, the Plan Proponents filed a further amended version of the amended Disclosure Statement [Docket No. 796].

E. The Petitioning Creditors' "Alternative Plan"

At the May 15 Hearing, the Petitioning Creditors expressed their desire to submit an alternative offer based on the structure of the Debtors' Amended Plan. After the May 15 Hearing, the Petitioning Creditors continued to express interest in submitting an alternative offer, but the Debtors did not engage and could not identify who at the Debtors would receive and evaluate such bid. *See* Docket Nos. 712, 718 and 720. In order to progress these cases, on June 5, 2024, the Petitioning Creditors provided an alternative bid term sheet (the "PC Alternative Term Sheet ") to counsel for the Debtors and the Creditors' Committee and the next day filed the PC Alternative Term Sheet on the docket. *See* Docket No. 745. The PC Alternative Term Sheet sets forth the terms of a comprehensive restructuring of the existing debt and other obligations of the Debtors that is based on the Debtors' Amended Plan but provides significant improvements for creditors. *Id.*

On June 11, 2024, the Petitioning Creditors filed the *Petitioning Creditors' Alternative Chapter 11 Plan for Eletson Holdings Inc. and its Affiliated Debtors* [Docket No. 762] (the "PC Alternative Plan") and the related disclosure statement [Docket No. 763] (the "PC Alternative DS"). On June 17, 2024, the Petitioning Creditors filed revised versions of the PC Alternative Plan and the PC Alternative DS. *See* Docket Nos. 797, 798, 801, and 802.

A motion to consider approval of the PC Alternative DS [Docket No. 764] (the "PC Alternative Solicitation Motion") was heard at the June 18 Hearing consistent with the Court's direction at a hearing held on June 7, 2024. On June 14, 2024, the Petitioning Creditors filed financial wherewithal information related to the PC Alternative Plan. *See* Docket No. 781. On June 14, 2024, the Debtors filed an objection to the PC Alternative Solicitation Motion and the Creditors' Committee filed an objection and reservation of rights to the PC Alternative Solicitation Motion. *See* Docket Nos. 783 and 784. On June 17, 2024, the Petitioning Creditors filed an omnibus reply in support of the PC Alternative Solicitation Motion. *See* Docket No. 794.

At the June 18 Hearing, the Bankruptcy Court granted the PC Alternative Solicitation Motion, and directed the Debtors and the Petitioning Creditors to submit a joint solicitation order to the Bankruptcy Court.

IV. SUMMARY OF THE PLAN

THE FOLLOWING SUMMARY HIGHLIGHTS CERTAIN PROVISIONS OF THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN (A COPY OF WHICH IS ATTACHED HERETO AS **APPENDIX A**). IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE PLAN SHALL CONTROL.

A. Unclassified Claims

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims (including, Professional Fee Claims and U.S. Trustee Fees), DIP Claims, and Priority Tax Claims are not classified and not entitled to vote on the Plan.

1. *Administrative Claims*

Except with respect to Professional Fee Claims, unless the Holder of an Allowed Administrative Claim agrees to less favorable treatment of such Claim, on or as soon as reasonably practicable after the later of (a) the Effective Date, (b) the date on which an Administrative Claim becomes an Allowed Administrative Claim, or (c) the date on which an Allowed Administrative Claim becomes payable under any agreement relating thereto, each Holder of an Allowed Administrative Claim shall receive, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, such Allowed Administrative Claim, Cash equal to the unpaid portion of such Allowed Administrative Claim.

To the extent not already asserted in the Chapter 11 Cases pursuant to a timely filed Proof of Claim in accordance with the Bar Date Order, all requests for allowance and payment of Administrative Claims (other than (i) Professional Fee Claims (such claims are subject to the Professional Fee Claims Bar Date), (ii) Claims asserted under section 503(b)(9) of the Bankruptcy Code (such Claims are subject to the General Bar Date), (iii) U.S. Trustee Fees, (vi) Administrative Claims that have been Allowed on or before the Effective Date, and (v) Administrative Claims that were already asserted in the Chapter 11 Cases pursuant to a timely Proof of Claim in accordance with the Bar Date Order), must be filed and served on the Debtors and the Plan Proponents, or, after the Effective Date, Reorganized Holdings, and their counsel, so as to actually be received on or before the Administrative Claims Bar Date. The notice of the occurrence of the Effective Date shall set forth the Administrative Claims Bar Date and shall constitute notice thereof. For the avoidance of doubt, Holders of Administrative Claims based on liabilities incurred by the Debtors in the ordinary course of business after the Petition Date must file and serve a request for payment of such Administrative Claim by the applicable Administrative Claims Bar Date.

After notice and a hearing, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, a Final Order.

Holders of Administrative Claims (other than (i) Professional Fee Claims, (ii) Claims asserted under section 503(b)(9) of the Bankruptcy Code), (iii) U.S. Trustee Fees, (iv) Administrative Claims that have been Allowed on or before the Effective Date, and (v) Administrative Claims that were already asserted in the Chapter 11 Cases pursuant to a timely filed Proof of Claim in accordance with the Bar Date Order), that do not file and serve a request for allowance and payment of an Administrative Claim by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting Administrative Claims against the Debtors, Reorganized Holdings, the Estates, or their assets and properties, and any Administrative Claims shall be deemed disallowed as of the Effective Date without the need for any notices, objection, or other

action from the Debtors or Reorganized Holdings, as applicable, or any action or approval of the Bankruptcy Court.

2. *DIP Claims*

All DIP Claims (if any) shall be deemed Allowed as of the Effective Date in an amount equal to the aggregate amount of the DIP Facility obligations approved by the Bankruptcy Court, including, (i) the principal amount outstanding under the DIP Facility on such date, (ii) all interest accrued and unpaid thereon through and including the date of payment, and (iii) all accrued fees, expenses, and indemnification obligations (if any) payable under the DIP Documents.

On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent a Holder of an Allowed DIP Claim agrees to a less favorable treatment of such Claim, each Holder of an Allowed DIP Claim shall receive, in full and final satisfaction, compromise, settlement, release and discharge of, and in exchange for such Allowed DIP Claim Cash equal to the unpaid portion of such Allowed DIP Claim.

Contemporaneously with the foregoing treatment, the DIP Facility and DIP Documents shall be deemed terminated without further action by the DIP Agent or the DIP Lenders. The DIP Agent and DIP Lenders shall take all actions to effectuate and confirm such termination as reasonably requested by the Plan Proponents or Reorganized Holdings, as applicable.

3. *U.S. Trustee Fees*

All U.S. Trustee Fees payable after the Effective Date, if any, shall be paid by Reorganized Holdings until the closing of the Chapter 11 Cases pursuant to section 350(a) of the Bankruptcy Code.

4. *Priority Tax Claims*

Unless the Holder of an Allowed Priority Tax Claim agrees to less favorable treatment of such Claim, each Holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Allowed Priority Tax Claims, either (a) payment in full in Cash, on or as soon as reasonably practicable after the latest of (i) the Effective Date, (ii) the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, and (iii) the date such Allowed Priority Tax Claim becomes payable under applicable non-bankruptcy law, (b) upon such other terms as agreed between the Plan Proponents and each Holder of such Allowed Priority Tax Claim, or (c) over a period ending not later than five (5) years after the Petition Date consistent with section 1129(a)(9)(C) of the Bankruptcy Code.

5. *Professional Fee Claims*

All applications for allowance and payment of Professional Fee Claims by Professionals for services rendered and reimbursement of expenses incurred prior to the Effective Date must be filed on or before the Professional Fee Claims Bar Date. If an application for a Professional Fee Claim is not filed by the Professional Fee Claims Bar

Date, such Professional Fee Claim shall be deemed waived, and the Holder of such Claim shall be forever barred from receiving payment on account thereof. The notice of the occurrence of the Effective Date shall set forth the Professional Fee Claims Bar Date and shall constitute notice thereof. Objections to any Professional Fee Claims must be filed and served on Reorganized Holdings, the Plan Proponents, and the requesting Professional, no later than twenty-one (21) days after service of the applicable final application for allowance and payment of Professional Fee Claims.

Unless otherwise agreed to (1) by the Plan Proponent and the Professional prior to the Effective Date or (2) by Reorganized Holdings and the Professional after the Effective Date, the amount of Professional Fee Claims owing to such Professional that are Allowed by Final Order shall be paid in full in Cash by Reorganized Holdings as soon as reasonably practicable after its Professional Fee Claims are Allowed by order of the Bankruptcy Court, (x) *first*, by application of any retainer monies held by such Professional, and (y) *second*, once such retainer balance is exhausted, Reorganized Holdings shall pay such Professional the remaining balance of its Allowed Professional Fee Claim in Cash.

6. *Post-Effective Date Fees and Expenses*

On the Effective Date, the retention, including all rights and duties arising from, or related to, the Chapter 11 Cases, of each of the Debtors' retained professionals shall terminate; *provided*, *however*, that the Debtors' retained professionals may file fee applications in accordance with the Plan and Confirmation Order by the Professional Fee Claims Bar Date.

B. Classification and Treatment of Claims

The following table summarizes the classification and treatment of all Claims against the Debtors under the Plan.

Class and Estimated Amount	Summary of Treatment	Estimated Recovery	Entitled to Vote
Other Priority Claims[24] **(Class 1)** **(Amount $0)**	Unless the Holder of an Allowed Other Priority Claim agrees to less favorable treatment of such Claim, each Holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Allowed Other Priority Claim, at the option of the Plan Proponents or Reorganized Holdings, as applicable, Cash in an amount equal to the Allowed amount of such Allowed Other Priority Claim as soon as reasonably practicable after the latest of (1) the Effective Date, (2) the date that such Claim becomes an Allowed Other Priority Claim, and (3) a date agreed to by the Plan Proponents or Reorganized Holdings, as applicable, and the Holder of such Allowed Other Priority Claim.	100% Unimpaired	No (Deemed to Accept)
Secured Claims[25] **(Class 2)** **(Amount TBD)**	Unless the Holder of an Allowed Secured Claim agrees to less favorable treatment of such Claim, each Holder of an Allowed Secured Claim shall receive, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Allowed Secured Claim, at the option of the Plan Proponents or Reorganized Holdings, as applicable, (1) Cash in an amount equal to the Allowed amount of such Allowed Secured Claim as soon as reasonably practicable after the latest of (A) the Effective Date, (B) the date that such Claim becomes an Allowed Secured Claim, and (C) a date agreed to by the Plan Proponents or Reorganized Holdings, as applicable, and the Holder of such Secured Claim; (2) reinstatement of such Allowed Secured Claim; (3) the collateral securing such Holder's Allowed Secured Claim, with any deficiency to result in an Allowed General Unsecured Claim; or (4) such other treatment rendering such Allowed Secured Claim Unimpaired.	100% Unimpaired	No (Deemed to Accept)

[24] *Other Priority Claim* means any Claim against any Debtor accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than an Administrative Claim, DIP Claim, or Priority Tax Claim.

[25] *Secured Claim* means a Claim against a Debtor (other than an Administrative Claim, DIP Claim, Priority Tax Claim, Other Priority Claim, OCM Guaranty Claim, Subordinated Claim, or Intercompany Claim), that is secured by a Lien on property in which a Debtor's Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder's interest in the applicable Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) or 1129(b) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code.

Class and Estimated Amount	Summary of Treatment	Estimated Recovery	Entitled to Vote
General Unsecured Claims[26] **(Class 3)** **(Amount $505 million to $768 million)**	Unless the Holder of an Allowed General Unsecured Claim agrees to less favorable treatment of such Claim, each Holder of an Allowed General Unsecured Claim shall receive on the Effective Date or as soon as practicable thereafter, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Allowed General Unsecured Claim, the following (1) and (2): (1) at such Holder's election, either a. Equity Option: if such General Unsecured Claimholder makes a written election on a timely and properly delivered and completed Ballot or other writing satisfactory to the Plan Proponents, its Pro Rata Share of 25% of the Reorganized Equity (subject to dilution on account of the Backstop Premium and the EIP); or b. Cash Option: its Pro Rata Share, among General Unsecured Claims, of the GUC Cash Pool; *provided*, for the avoidance of doubt, the Pro Rata Share calculation in this subclause (B) shall be calculated based on the aggregate amount of all Allowed General Unsecured Claims whether or not Holders of such Claims receive the treatment in this subclause (B); *provided*, if a General Unsecured Claimholder does not submit a Ballot or submits a Ballot but fails to affirmatively elect the treatment set forth in Section 3.3(c)(iii)(1)(A) of the Plan, such General Unsecured Claimholder shall be deemed to have elected the treatment specified in Section 3.3(c)(iii)(1)(B) of the Plan with respect to its Allowed General Unsecured Claim; and (2) Rights Offering: its Pro Rata Share of the Rights Offering Subscription Rights (subject to dilution on account of the Backstop Premium and the EIP), to purchase the Reorganized Equity to be issued pursuant to the Rights Offering to the extent such General Unsecured Claimholder elects to exercise its Rights Offering Subscription Rights.	1.8-2.7% (Cash Out) 1.9-8.32% (Equity, excluding rights exercise) 2.9% -12.7% (Equity including rights exercise)[27] Impaired	Yes

Class and Estimated Amount	Summary of Treatment	Estimated Recovery	Entitled to Vote
Convenience Claims[28] **(Class 4)** **(Amount TBD)**	On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed Convenience Claim agrees to less favorable treatment of such Claim, each Holder of an Allowed Convenience Claim shall receive, in full and final satisfaction, compromise, settlement, release and discharge of and in exchange for such Allowed Convenience Claim, Cash in an amount equal to 15% of the face amount of such Holder's Allowed Convenience Claim; *provided*, the aggregate distributions to Holders of Convenience Claims shall not exceed the Convenience Claim Cap; *provided*, *further*, that in the event the aggregate distributions to Holders of Convenience Claims exceeds the Convenience Claim Cap, Holders of such Claims shall receive their Pro Rata Share of the Convenience Claim Cap.	15%[29] Impaired	Yes

[26] *General Unsecured Claim* means any Claim against any Debtor, but excluding any Administrative Claims, DIP Claims, Professional Fee Claims, U.S. Trustee Fees, Priority Tax Claims, Other Priority Claims, Convenience Claims, OCM Guaranty Claims, Subordinated Claims, or Intercompany Claims, as of the Petition Date that is neither secured by collateral nor entitled to priority under the Bankruptcy Code or any Final Order of the Bankruptcy Court. For the avoidance of doubt, any General Unsecured Claims (including, for the avoidance of doubt, 2022 Notes Claim and Old Notes Claims) that exceed the Convenience Claim Threshold Amount is a "General Unsecured Claim," unless, pursuant to Section 3.3(d)(i) of the Plan, such Holder irrevocably elects to have its General Unsecured Claim treated as a Convenience Claim on its Ballot.

[27] The Valuation Analysis attached hereto as **Appendix E** estimates plan equity value ranging from $55.8 million (low) to $68.3 million (high) with a midpoint of $62.1 million. The 8% Backstop Premium is calculated on the basis of the equity value plus the maximum Rights Offering Amount minus Administrative Claims, Convenience Claims, and the Cash Out option. The Plan cash is set at $5 million in all scenarios with the excess cash being returned to the Rights Offering participants. After the allocation of the Backstop Premium, the remaining equity value is split between the Reorganized Equity to General Unsecured Claimholders under the Plan (25%) and the Rights Offering participants (75%).

[28] *Convenience Claim* means any Allowed General Unsecured Claim against the Debtors in an amount that is greater than $0 but less than or equal to the Convenience Claim Threshold Amount; *provided*, that Holders of Allowed General Unsecured Claims (including, for the avoidance of doubt, 2022 Notes Claims and Old Notes Claims) exceeding the Convenience Claim Threshold Amount may irrevocably elect on their Ballot to have their General Unsecured Claim reduced to the Convenience Class Threshold Amount and treated as Convenience Claims.

[29] Estimated recoveries for Holders of Allowed Convenience Claims will be less than 15% if more than $16,666,667 in Claims elect to have their General Unsecured Claim reduced to the Convenience Class Threshold Amount and treated as Convenience Claims.

Class and Estimated Amount	Summary of Treatment	Estimated Recovery	Entitled to Vote
OCM Guaranty Claims[30] **(Class 5)** **(Amount N/A)**	On the Effective Date, all OCM Guaranty Claims shall be Reinstated and such Holder's claims shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.	N/A Unimpaired	No (Deemed to Accept)
Subordinated Claims[31] **(Class 6)** **(Amount TBD)**	On the Effective Date, each Allowed Subordinated Claim shall be cancelled, discharged, and released, without any distribution to Holders.	0% Impaired	No (Deemed to Reject)
Intercompany Claims[32] **(Class 7)** **(Amount N/A)**	On the Effective Date, each Allowed Intercompany Claim shall either be Reinstated or discharged, cancelled, released, and extinguished, without any distributions to Holders, as determined by the Plan Proponents or Reorganized Holdings, as applicable.	N/A Impaired / Unimpaired	No (Deemed to Accept /Reject)
Intercompany Interests[33] **(Class 8)** **(Amount N/A)**	On the Effective Date, each Allowed Intercompany Interest shall be either be Reinstated or discharged, cancelled, released, and extinguished, without any distributions to Holders, as determined by the Plan Proponents or Reorganized Holdings, as applicable.	N/A Impaired / Unimpaired	No (Deemed to Accept / Reject)

[30] *OCM Guaranty Claim* means any Claim arising from or related to the guarantees executed by Eletson Holdings in favor of the obligations of each of: Fourni Special Maritime Enterprises; Kastos Special Maritime Enterprises; Kimolos II Special Maritime Enterprise; Kinaros Special Maritime Enterprise; OCM Maritime Rhine LLC; OCM Maritime Yukon LLC; OCM Maritime Autumn LLC; and OCM Maritime Thames LLC.

[31] *Subordinated Claim* means collectively, Section 510(b) Claims and Eletson Insider Claims.

[32] *Intercompany Claim* means any and all Claims of a Debtor against another Debtor or non-Debtor Affiliate.

[33] *Intercompany Interest* means an Interest in a Debtor held by another Debtor; *provided*, for the avoidance of doubt, Parent Equity Interests are not Intercompany Interests.

Class and Estimated Amount	Summary of Treatment	Estimated Recovery	Entitled to Vote
Existing Equity Interests[34] **(Class 9)**	On the Effective Date, each Allowed Existing Equity Interest shall be discharged, cancelled, released, and extinguished, without any distributions to Holders.	0% Impaired	No (Deemed to Reject)

C. Other Miscellaneous Plan Provisions

The Plan contains various provisions relating to:

- the means for implementing the Plan, and operations and governance of the Debtors after the Effective Date (*see* Article V;)
- procedures for making distributions from the Debtors and Reorganized Holdings and the rights and powers of any Disbursing Agent (*see* Article VI);
- procedures for the reconciliation of Claims and Proofs of Claim and related matters, such as objections and estimation for any Disputed Claims (*see* Article VII);
- the treatment of executory contracts and unexpired leases (*see* Article VIII);
- conditions precedent to consummation of the Plan (*see* Article IX);
- the effect of confirmation (including the injunction and exculpation provisions (as explained in greater detail below)) (*see* Article X); and
- miscellaneous other implementation and effectuating provisions, including the retention of the Bankruptcy Court's jurisdiction with respect to certain issues (*see* Articles XI, XII).

D. Certain Matters Relating to the Old Notes and the 2022 Notes

The Plan contains certain provisions in Section 5.4 of the Plan (titled "Cancellation of Existing Securities and Agreements") that impacts distributions to

[34] *Existing Equity Interest* means 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.

Holders of Old Notes Claims and 2022 Notes Claims. Among other things, Section 5.4 of the Plan provides that:

> [T]he 2022 Notes Documents and the Old Notes Documents shall continue in effect solely for the purposes of (a) allowing the applicable Holders of Claims to receive their respective distributions under this Plan as provided herein, (b) allowing the Indenture Trustees to facilitate the distributions under this Plan to the applicable Holders of Claims as provided herein and otherwise comply with any obligations they may have under this Plan, including the cancellation of existing security interests pursuant to this Section 5.4, (c) allowing the Indenture Trustees to preserve their respective rights to payment of fees, expenses, and indemnification obligations as against any money or property distributable to the relevant Holder of 2022 Notes Claims and Old Notes Claims, as applicable, under this Plan, and to deduct such fees and expenses from such distributions, including in respect of payment and the right to exercise their charging liens, if any, against such distributions, (d) permitting the Indenture Trustees to perform any functions that are necessary to effectuate the foregoing, and (e) allowing the Indenture Trustees to assert any other right, privilege, benefit, or protection granted to either of them under the relevant documentation other than against Reorganized Holdings and the Exculpated Parties; *provided*, that the foregoing shall not affect the discharge of the Debtors with respect to the 2022 Notes Claims and the Old Notes Claims as provided for herein, or result in any expenses or liability to Reorganized Holdings, except to the extent set forth in or provided for under this Plan. Notwithstanding anything to the contrary herein, the terms and provisions of this Plan shall not alter, modify, or amend any existing contract or agreement between any of the Indenture Trustees and any current or former 2022 Noteholder or Old Noteholder, as applicable, and any such contract or agreement shall remain in full force and effect according to its terms following the Effective Date.

Plan § 5.4.

In broad strokes, Section 5.4 of the Plan affirms the ability of the Old Notes Trustee and the 2022 Notes Trustee to exercise their respective "charging lien" to recover from noteholders' distributions under the Plan amounts necessary to satisfy the Old Notes Trustee's and 2022 Notes Trustee's fees and expenses related to their respective indentures. Such amounts will reduce noteholders' recoveries under the Plan on a pro rata basis and are expected to be approximately (a) in the case of the Old Notes Trustee, approximately $400,000, and (b) in the case of the 2022 Notes Trustee, between approximately $3,000,000 and $4,000,000. To the extent that any noteholders have paid the Old Notes Trustee's and/or 2022 Notes Trustee's fees and expenses prior to the Effective Date, such fees and expenses will be reimbursed in accordance with any agreements between such noteholder(s) and the Old Notes Trustee and/or 2022 Notes Trustee.

E. New Board of Reorganized Holdings

The Plan contains the following provision regarding the New Board of Reorganized Holdings.

The New Board shall consist of three directors: (i) one director selected by the Plan Proponents, (ii) one director selected by the Plan Proponents, subject to consent of the Creditors' Committee (not to be unreasonably withheld, conditioned, or delayed), and (iii) one director designated as "independent" selected by the Creditors' Committee (the "Independent Director"). The identities of directors on the New Board shall be set forth in the Plan Supplement, to the extent known at the time of filing, in accordance with 11 U.S.C. § 1129(a)(5).

The New Corporate Governance Documents will (i) prohibit the issuance of non-voting equity securities, to the extent required under section 1123(a)(6) of the Bankruptcy Code, and (ii) provide that any decisions related to claims and causes of action with Levona Holdings, Ltd. and its affiliates, including Pach Shemen (the "*Levona Claims*") are required to be made by the independent director; *provided*, that if the New Board disagrees with any of the decisions of the Independent Director with respect to the Levona Claims, the New Board can refer the dispute to a final offer arbitrator (also known as a baseball arbitrator) or an early neutral evaluator—in each case, governed by the International Centre for Dispute Resolution and the American Arbitration Association—to decide; *provided*, *further*, the majority of Reorganized Holdings' shareholders other than Pach Shemen (including, any Reorganized Holdings' shareholders affiliated with Pach Shemen) may settle the Levona Claims or direct the actions of the independent director with respect to the Levona Claims. The costs of any such arbitrations or evaluations shall be borne by Reorganized Holdings.

The members of the governing body of each Debtor prior to the Effective Date, in their capacities as such, shall have no continuing obligations to Reorganized Holdings on or after the Effective Date and each such member will be deemed to have resigned or shall otherwise cease to be a director or manager of the applicable Debtor on the Effective Date. Commencing on the Effective Date, each of the directors of Reorganized Holdings shall serve pursuant to the terms of the New Corporate Governance Documents and may be replaced or removed in accordance with such organizational documents.

F. Backstop Commitment and Rights Offering

1. *Backstop Agreement*

Under the terms of the Backstop Agreement: (a) on the Effective Date, the Initial Backstop Party has agreed to purchase all of the Reorganized Equity offered and not duly subscribed for and/or purchased in the Rights Offering in accordance with the Rights Offering Procedures; and (b) the Backstop Parties will receive the Backstop Premium, which will be immediately and automatically deemed fully earned upon entry into the Backstop Agreement and payable upon the Effective Date. The Initial Backstop Party's financial wherewithal to make the backstop commitment, as well as a commitment letter, is attached hereto as **Appendix F**.

In accordance with the Backstop Agreement and the Plan, any General Unsecured Claimholder that is eligible to purchase the Reorganized Equity pursuant to Section 5.9(b) of the Plan and desires to participate in the Backstop Agreement, that delivers: (a) an executed election joinder in the form attached to the Backstop Agreement as Exhibit C, including certification of eligibility to purchase such Reorganized Equity; and (b) proof of funds or other financial wherewithal documentation, in each case, to counsel for the Petitioning Creditors at Togut, Segal & Segal LLP (Kyle J. Ortiz (kortiz@teamtogut.com) and Bryan M. Kotliar (bkotliar@teamtogut.com)), no later than ten (10) days following the Solicitation Commencement Deadline (as defined in the Rights Offering Approval Order) (any such General Unsecured Claimholder that complies with the foregoing, a "Subsequent Backstop Party" and together with the Initial Backstop Parties, the "Backstop Parties").

The offering, issuance, and distribution of the Reorganized Equity on account of the General Unsecured Claims and the Rights Offering shall be exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable U.S. state or other law requiring registration prior to the offering, issuance, distribution, or sale of securities in accordance with, and pursuant to, section 1145 of the Bankruptcy Code to the extent permitted or under the Securities Act by virtue of section 4(a)(2) thereof, Regulation D, and/or Regulation S. Such Reorganized Equity issued pursuant to section 1145 of the Bankruptcy Code will not be "restricted securities" as defined in Rule 144(a)(3) of the Securities Act and will be freely tradable and transferable by the initial recipients thereof, subject to the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 1145(b) of the Bankruptcy Code, and compliance with applicable securities laws, including Rule 144 of the Securities Act, and any rules and regulations of the SEC, if any, applicable at the time of any future transfer of such securities or instruments. To the extent the issuance and distribution of any Reorganized Equity is being made in reliance on the exemption from registration set forth in section 4(a)(2) of the Securities Act, Regulation D, and/or Regulation S promulgated under the Securities Act, and similar registration exemptions applicable outside of the United States, such securities will be considered "restricted securities" subject to resale restrictions and may be resold, exchanged, assigned, or otherwise transferred only pursuant to a registration statement or available exemption from the registration requirements of the Securities Act and other applicable law.

The issuance of the Reorganized Equity to the Backstop Parties, and the payment of the Backstop Premium is being made in reliance on the exemption from registration set forth in section 4(a)(2) of the Securities Act, Regulation D, and/or Regulation S promulgated under the Securities Act, and similar registration exemptions applicable outside of the United States, such securities will be considered "restricted securities" subject to resale restrictions and may be resold, exchanged, assigned, or otherwise transferred only pursuant to a registration statement or available exemption from the registration requirements of the Securities Act and other applicable law.

Any securities issued under the EIP will be issued pursuant to a registration statement or available exemption from registration under the Securities Act and other applicable law.

2. *Rights Offering Procedures*

On April 17, 2024, the Petitioning Creditors filed a motion [Docket No. 592] (the "Rights Offering Procedures Motion") seeking approval of procedures for conducting the Rights Offering.[35] On May 9, 2024, the Debtors filed an objection to the Rights Offering Procedures Motion, which the Petitioning Creditors replied to on May 13, 2024. *See* Docket Nos. 652 and 667. On [•] [•], 2024, the Bankruptcy Court entered an order approving the Rights Offering Procedures Motion [Docket No. [•]] (the "Rights Offering Approval Order"). The up to $43.5 million Rights Offering will be conducted in reliance upon the exemptions from registration under section 1145 of the Bankruptcy Code or Section 4(a)(2) of the Securities Act. All General Unsecured Claimholders (each, an "Applicable Claim") are entitled to receive their share of Rights Offering Subscription Rights to acquire up to 75% of the Reorganized Equity, at a price that represents an implied 10.8% discount to the mid-point of the plan equity value of up to US$62,058,088.00, in accordance with the Rights Offering Procedures, which shall be backstopped by the Backstop Parties.

Subject to the terms and conditions set forth in the Plan, the Rights Offering Procedures and the form to be used for exercising the Rights Offering Subscription Rights (the "Subscription Form"), each General Unsecured Claimholder of an Applicable Claim is entitled to subscribe for up to its Pro Rata Portion (as defined in the Rights Offering Procedures) of the Reorganized Equity to be issued pursuant to the Rights Offering at a purchase price of $4.85[36] per security (the "Purchase Price"). There will be no oversubscription rights in the Rights Offering. Any Reorganized Equity that is unsubscribed by General Unsecured Claimholders pursuant to the Rights Offering will not be offered to other General Unsecured Claimholders but will be purchased by the Backstop Parties in accordance with the Backstop Agreement. Subject to the terms and conditions of the Backstop Agreement, the Backstop Parties are obligated to purchase their Pro Rata Portion of the applicable Reorganized Equity pursuant to the Rights Offering.

Pursuant to the Rights Offering Procedures, the Rights Offering will commence three Business Days from the entry of the Rights Offering Approval Order (the "Subscription Commencement Date") and will end on August [5], 2024 at 4:00 p.m. prevailing Eastern Time (the "Subscription Expiration Date").

Pursuant to the Rights Offering Procedures, the Rights Offering Subscription Rights issued to Holders of Applicable Claims may not be detached or transferred separately from the corresponding Applicable Claim. Any attempted detachment of such Rights Offering Subscription Rights from the corresponding Applicable Claim by a General Unsecured Claimholder will be null and void, will have no effect, and will not be recognized for any purpose. The Applicable Claim and the

[35] Capitalized terms not otherwise defined in this section of this Disclosure Statement shall have the meanings ascribed to such terms in the Rights Offering Procedures Motion or the Rights Offering Approval Order, as applicable.

[36] Rounded to the nearest whole cent.

Rights Offering Subscription Rights will transfer together as a unit together with the underlying Applicable Claims with respect to which such Rights Offering Subscription Rights were issued, subject to such limitations, if any, that would be applicable to the transferability of the Applicable Claims.

Once a General Unsecured Claimholder has properly exercised its Rights Offering Subscription Rights, subject to the terms and conditions contained in the Rights Offering Procedures, such exercise will be revocable only upon written consent of the Plan Proponents and the Subscription Agent. Moreover, following the exercise of any Rights Offering Subscription Rights, the Holder thereof shall be prohibited from transferring or assigning the Applicable Claims, as applicable, corresponding to such Rights Offering Subscription Rights until the earlier of (i) the termination of the Rights Offering and (ii) the revocation of exercise of the Rights Offering Subscription Rights to the extent permitted by the Rights Offering Procedures.

To exercise the Rights Offering Subscription Rights, a General Unsecured Claimholder must: (i) return a duly executed Subscription Form (including the Certification, with an accompanying IRS Form W-9 or appropriate IRS Form W-8, as applicable) to the Subscription Agent, so that such documents are actually received by the Subscription Agent by the Subscription Expiration Deadline; (ii) if the General Unsecured Claimholder is not one of the Backstop Parties, at the same time it returns its Subscription Form to the Subscription Agent, but in no event later than the Subscription Expiration Deadline, pay the applicable Purchase Payment Amount to the Subscription Agent by wire transfer **ONLY** of immediately available funds in accordance with the instructions included in the Subscription Form; and (iii) if the General Unsecured Claimholder is one of the Backstop Parties, at the same time it returns its Subscription Form to the Subscription Agent, but in no event later than the Funding Date, pay the applicable Purchase Payment Amount to the Escrow Account.

G. Proposed Substantive Consolidation

Substantive consolidation is an equitable legal doctrine under which a bankruptcy court may treat separate, individual debtors as if they were merged into a single debtor entity and vested with the cumulative assets and liabilities of the debtor estates. The result of substantive consolidation is that claims asserted by creditors against multiple debtors are converted into claims against the surviving consolidated debtor entity.

In determining whether to order substantive consolidation, courts in the Second Circuit consider whether (i) "creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit" or (ii) "the affairs of the debtors are so entangled that consolidation will benefit all creditors." *In re Augie/Restivo Baking Co., Ltd.*, 860 F.2d 515, 518 (2d Cir. 1988). Satisfaction of either prong will support substantive consolidation. *In re Extended Stay, Inc.*, No. 09-13764-JLG, 2020 WL 10762310, at *42 (Bankr. S.D.N.Y. Aug. 8, 2020). However, courts have cautioned that it is a remedy that is to be applied "sparingly." *Id.*

The first *Augie/Restivo* prong is "applied from the creditors' perspective" and the inquiry ''is whether creditors treated the [subject entities] as a single entity, not

whether the managers of the [entities] themselves, or consumers, viewed the [entities] as one enterprise." *Id.* at *43.

The second *Augie/Restivo* prong concerns both financial and operational entanglement between the subject entities, but the prong is only satisfied where the entanglement and/or commingling is so pervasive that untangling would be either impossible or so difficult and costly that doing so would effectively extinguish assets such that the creditors will not benefit from consolidation. *See e.g., In re Verestar, Inc.*, 343 B.R. 444, 463 (Bankr. S.D.N.Y. 2006) (denying consolidation of a non-debtor-parent-company who commingled funds and business operations with subsidiary-debtor, reasoning "there is no allegation that it is impossible to sort out the intercompany transfers or that the companies' respective rights to the cash cannot be traced"); *Extended Stay*, 2020 WL 10762310 at *53 (citing *In re WorldCom, Inc.*, No. 02-13533, 2003 WL 23861928, at *36 (Bankr. S.D.N.Y. Oct. 31, 2003) (explaining that substantive consolidation is appropriate when "it would be so costly and difficult to untangle the [d]ebtors' financial affairs, such that doing so is a 'practical impossibility,' " or "that it is not possible to create accurate financial data for each legal entity."); *In re Drexel Burnham Lambert Grp.*, Inc., 138 B.R. 723, 766 (Bankr. S.D.N.Y. 1992) (finding substantive consolidation appropriate where debtors operated as single enterprise and establishing allocation of liability "would be a Herculean task consuming years of costly professional services, thereby draining significant amounts of value from the [d]ebtors' estates")).

In evaluating whether to order substantive consolidation, courts consider (a) the presence or absence of consolidated financial statements, (b) the unity of interest and ownership between various corporate entities, (c) the existence of parent and intercompany guarantees on loans, (d) the degree of difficulty in segregating and ascertaining individual assets and liabilities, (e) the existence of transfers of assets without formal observation of corporate formalities, (f) the commingling of assets and business functions, and (g) the profitability of consolidation at a single location. *Augie/Restivo*, 860 F.2d at 518.

The Plan provides for limited substantive consolidation of the Debtors' estates for purposes of making distributions under the Plan. The Plan Proponents believe that consensual substantive consolidation provides the most equitable treatment as to the Debtors' creditors (which nearly entirely consist of claims against Debtor Eletson Holdings and not Debtors Eletson MI and Eletson Finance). Substantive consolidation maximizes the returns to creditors under the Plan and no creditors or other parties in interest are harmed by the limited substantive consolidation contemplated by the Plan.

H. Releases

The Plan does not provide for the release of Claims or Causes of Action belonging to the Debtors or their Estates or any third party Claims or Causes of Action held by third party non-Debtors. The Plan contains certain usual and customary discharge and injunction provisions consistent with the Bankruptcy Code and as part of implementing the restructuring set forth in the Plan, as well as certain exculpation provisions for the Plan Proponents, the Creditors' Committee (and its members), and

their respective Related Parties. Each of the foregoing are described in greater detail in Sections 10.3, 10.4, and 10.5 of the Plan and are set forth below.

1. *Discharge*

Pursuant to and to the fullest extent permitted by the Bankruptcy Code, except as otherwise specifically provided in the Plan or the Confirmation Order, the treatment of Claims and Interests under the Plan shall be in full and final satisfaction, compromise, settlement, release, discharge and termination, as of the Effective Date, of all Claims of any nature whatsoever, whether known or unknown, against, and Interests in, the Debtors, any property of the Estates, or any property of Reorganized Holdings, including all Claims of the kind specified in section 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not: (a) a Proof of Claim or Interest based upon such Claim, debt, right, or Interest is filed or deemed filed pursuant to section 501 of the Bankruptcy Code, (b) a Claim or Interest based upon such Claim, liability, obligation or Interest is Allowed pursuant to section 502 of the Bankruptcy Code, or (c) the Holder of such a Claim, liability, obligation or Interest has voted to accept the Plan. Except as otherwise provided herein, any default or "event of default" by the Debtors with respect to any Claim or Interest that existed immediately prior to or on account of the filing of these Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date.

2. *Injunction*

Except as otherwise specifically provided in the Plan or the Confirmation Order, all Persons or Entities who have held, hold or may hold (a) Claims or Interests that arose prior to the Effective Date, (b) Causes of Action that are subject to exculpation pursuant to Section 10.5 of the Plan (but only to the extent of the exculpation provided in Section 10.5 of the Plan), or (c) Claims, Interests or Causes of Action that are otherwise discharged, satisfied, stayed or terminated pursuant to the terms of the Plan and all other parties-in-interest seeking to enforce such Claims, Interests or Causes of Action are permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim (including a Subordinated Claim) against or Interest in the Debtors or Reorganized Holdings, or property of any Debtors or Reorganized Holdings, other than to enforce any right to a distribution pursuant to the Plan, (ii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Debtors or Reorganized Holdings or property of any Debtors or Reorganized Holdings with respect to any such Claim or Interest, other than to enforce any right to a distribution pursuant to the Plan, (iii) creating, perfecting or enforcing any Lien or encumbrance of any kind against the Debtors or Reorganized Holdings, or against the property or interests in property of the Debtors or Reorganized Holdings with respect to any such Claim or Interest, other than to enforce any right to a distribution pursuant to the Plan, or (iv) asserting any right of setoff (except for setoffs validly exercised prepetition) or subrogation of any kind against any obligation due from the Debtors or Reorganized Holdings, or against the property or interests in property of the Debtors or Reorganized Holdings, with respect to any such Claim or Interest. Such injunction shall extend to any successors or

assignees of the Debtors or Reorganized Holdings and its respective properties and interests in properties.

3. *Exculpation*

Effective as of the Effective Date, to the extent permitted under section 1125(e) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is exculpated from any Cause of Action related to any act or omission taking place between the Petition Date and the Effective Date, in connection with, relating to, or arising out of, the Chapter 11 Cases, the Involuntary Proceedings, the filing of the Involuntary Petitions, the formulation, preparation, dissemination, negotiation, or filing of the Plan, this Disclosure Statement, the Plan Supplement, the Rights Offering Procedures, the Backstop Agreement, or any transaction under the Plan, contract, instrument, or document or transaction approved by the Bankruptcy Court in these Chapter 11 Cases, except for (a) any Cause of Action related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted fraud, willful misconduct, or gross negligence of such Person, and (b) any Cause of Action related to any liability of professionals to their clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8 Rule 1.8(h)(1); *provided*, *however*, *that*, for the avoidance of doubt, any such exculpation shall not act or be construed to exculpate, channel, release, enjoin, or otherwise affect any civil or criminal enforcement action by a Governmental Unit.

V. BEST INTERESTS OF CREDITORS

Section 1129(a)(7) of the Bankruptcy Code requires that any holder of an impaired claim or interest voting against a proposed plan of reorganization must be provided in the plan with a value, as of the effective date of the plan, at least equal to the value that the holder would receive if the debtors' assets were liquidated under chapter 7 of the Bankruptcy Code. To determine what holders of claims and interests in each impaired class would receive if the debtors' assets were liquidated, the Bankruptcy Court must determine the dollar amount that would be generated from a liquidation of the debtors' assets in the context of a hypothetical liquidation. Such a determination must take into account the fact that secured claims, and any administrative claims resulting from the original chapter 11 cases and from the chapter 7 cases, would have to be paid in full from the liquidation proceeds before the balance of those proceeds were made available to pay unsecured creditors and make distributions (if any) to holders of interests.

In support of the Plan Proponents' belief that Holders of Claims in each impaired Class will receive more under the Plan than if the Debtors' assets were liquidated, attached to this Disclosure Statement as **Appendix C** is a liquidation analysis (the "Liquidation Analysis") prepared by Batuta Capital Advisors LLC ("Batuta") at the direction of the Plan Proponents. The Liquidation Analysis assumes that the Chapter 11 Cases were converted to chapter 7 cases and that each Debtors' assets are liquidated under the direction of a chapter 7 trustee.

The assumptions used in developing the Liquidation Analysis are inherently subject to significant uncertainties and contingencies. Accordingly, there can be no assurances that the values assumed in the Liquidation Analysis would be realized if the Debtors were actually liquidated. In addition, any liquidation would take place in the future at which time circumstances may exist that cannot presently be predicted. A description of the procedures followed and the assumptions and qualifications made by the Plan Proponents in connection with the Liquidation Analysis are set forth in the notes thereto.

THESE LIQUIDATION VALUES HAVE BEEN PREPARED SOLELY FOR USE IN THIS DISCLOSURE STATEMENT AND DO NOT REPRESENT VALUES THAT ARE APPROPRIATE FOR ANY OTHER PURPOSE. NOTHING CONTAINED IN THE LIQUIDATION ANALYSIS IS INTENDED TO BE OR CONSTITUTES A CONCESSION BY OR ADMISSION OF ANY DEBTOR FOR ANY PURPOSE.

VI. VALUATION AND FINANCIAL PROJECTIONS

A. Feasibility

In connection with confirmation of the Plan, the Bankruptcy Court must determine that the Plan is feasible in accordance with section 1129(a)(11) of the Bankruptcy Code (which section requires that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors). To support the Plan Proponents' belief that the Plan is feasible, Batuta has prepared the projections for Reorganized Holdings, as set forth in **Appendix D** (the "Financial Projections"). The Plan provides Reorganized Holdings with a substantial infusion of capital from the proceeds of the Rights Offering. This capital will allow the Debtors to emerge from bankruptcy upon the Effective Date of the Plan and satisfy Allowed Claims as provided for in the Plan. Accordingly, the Plan Proponents believe that all Plan obligations will be satisfied without the need for further reorganization of the Debtors.

B. Valuation

In connection with developing the Plan, Batuta performed an analysis of the estimated value of Reorganized Holdings, which is set forth in the valuation analysis in **Appendix E** (the "Valuation Analysis"). The Valuation Analysis is based on commonly accepted valuation methodologies.

The Valuation Analysis is based upon a number of estimates and assumptions that are inherently subject to significant uncertainties and contingencies beyond the control of the Plan Proponents and Reorganized Holdings. Accordingly, there can be no assurance that the ranges reflected in the Valuation Analysis would be realized if the Plan were to become effective, and actual results could vary.

THE VALUATION ANALYSIS REPRESENTS A HYPOTHETICAL VALUATION OF REORGANIZED HOLDINGS AND ITS ASSETS, WHICH ASSUMES THAT REORGANIZED HOLDINGS CONTINUES AS AN OPERATING BUSINESS. THE ESTIMATED VALUE SET FORTH IN THE VALUATION ANALYSIS DOES NOT

PURPORT TO CONSTITUTE AN APPRAISAL OR NECESSARILY REFLECT THE ACTUAL MARKET VALUE THAT MIGHT BE REALIZED THROUGH A SALE OR LIQUIDATION OF REORGANIZED HOLDINGS, ITS SECURITIES OR ITS ASSETS, WHICH MAY BE MATERIALLY DIFFERENT THAN THE ESTIMATES SET FORTH IN THE VALUATION ANALYSIS.

VII. SOLICITATION PROCEDURES AND DEADLINES

A. Solicitation Packages

The Plan Proponents and the Debtors are causing solicitation packages (the "Solicitation Packages") to be distributed to Holders of Claims entitled to vote on the Plan, the Debtors' Plan, and the PC Alternative Plan (together, the "Competing Plans"). Such Solicitation Packages include:

- a joint cover letter from the Plan Proponents and the Debtors describing the contents of such Solicitation Package;
- a letter from the Creditors' Committee providing its recommendations on the Competing Plans;
- a notice of the hearing before the Court to consider confirmation of the Competing Plans (the "Confirmation Hearing Notice");
- this Disclosure Statement together with the disclosure statements for the Competing Plans (the "Disclosure Statements"), with each of the three Competing Plans annexed thereto;
- the *Order (I) Approving Disclosure Statements, (II) Approving Solicitation and Notice Procedures with Respect to Confirmation of Competing Plans, (III) Approving Forms of Various Ballots and Notices in Connection Therewith, (IV) Approving Scheduling of Certain Key Dates in Connection with Confirmation, and (V) Granting Related Relief* [Docket No. [__]] (the "Disclosure Statement Order"), entered on [•] [•], 2024, excluding the exhibits attached thereto, approving the procedures for soliciting votes with respect to the Competing Plans and dates and deadlines related to the Bankruptcy Court's approval of the Competing Plans (referred to as "Confirmation");
- a ballot to cast a vote on the Competing Plans (each, a "Ballot"); and
- such other solicitation materials that the Bankruptcy Court may direct (such as materials related to the rights offering, as applicable).[37]

Holders of Claims not entitled to vote on the Competing Plans (the "Non-Voting Classes") will receive only the Confirmation Hearing Notice, which will

[37] Instructions on how to vote are included with the Solicitation Package and are described below.

provide them notice of such Holder's non-voting status.

Copies of the Disclosure Statements, the Competing Plans, all appendices and exhibits attached thereto and hereto, and all other pleadings filed and orders entered in these Chapter 11 Cases can be obtained by contacting the Voting Agent (a) in writing at Eletson Holdings Inc., *et al*., Ballot Processing Center c/o KCC dba Verita, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245, (b) via email at EletsonBallots@kccllc.com, or (c) by telephone at 888-647-1737 (Domestic) or 310-751-2624 (International).

B. Voting Procedures and Voting Deadline

The rules, requirements, and procedures regarding the submission of your Ballot are set forth in the Disclosure Statement Order and the Ballot and are summarized below for your convenience.

After carefully reviewing the Competing Plans, the Disclosure Statements, and the detailed instructions accompanying your Ballot, (a) you may choose to accept and / or reject more than one Competing Plan; and (b) you may indicate your preference among the Competing Plans that you have accepted on your Ballot or that you have been deemed to accept.

To be counted, your Ballot must be duly completed, executed, and **actually received** by 5:00 p.m. (prevailing Eastern Time) on [August] [5], 2024 (the "Voting Deadline"). Ballots may be delivered either via regular mail, courier, or delivery services or email to the Voting Agent at the following address: Eletson Holdings Inc., *et al*., Ballot Processing Center c/o KCC dba Verita, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245, email: EletsonBallots@kccllc.com.

If you are a Beneficial Holder of Claims in Class 3 and received a Ballot for Beneficial Holders (a "Beneficial Holder Ballot"), you must complete and return the Beneficial Holder Ballot to your broker, commercial bank, transfer agent, trust company, dealer, or other intermediary or nominee, or their mailing agent (each a "Nominee") so that it is received by your Nominee in sufficient time for your Nominee to submit a master ballot prior to the Voting Deadline.

Ballots received after the Voting Deadline will not be counted by the Debtors or the Plan Proponents except as expressly provided in the Disclosure Statement Order or in the event that the Voting Deadline is extended by the Debtors or the Plan Proponents and subject to any contrary order of the Bankruptcy Court.

If you have any questions about how to vote, the Solicitation Package you receive, or the amount of your claim, or if you wish to receive additional copies of the Competing Plans, the Disclosure Statements, or any exhibits or appendices thereto or hereto, please contact the Voting Agent at: 888-647-1737(Domestic) or 310-751-2624 (International) or via email at EletsonBallots@kccllc.com.

C. Confirmation Hearing and Deadline for Objections to Plan Confirmation

The Plan Proponents intend to seek the Bankruptcy Court's Confirmation of the Plan. The Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan for **[•], 2024 at [•] a.m. / p.m. (prevailing Eastern Time) (the "Confirmation Hearing").** The Plan Proponents may adjourn the Confirmation Hearing by filing a notice on the docket of the Chapter 11 Cases or by announcing an adjournment on the record of a hearing or status conference held with the Bankruptcy Court.

Any objections to Confirmation of the Plan must be filed with the Bankruptcy Court and served on the parties indicated in the boxes immediately below by no later than **4:00 p.m. (prevailing Eastern Time) on August 28, 2024 (the "Objection Deadline").** Unless an objection to Confirmation is timely filed and served, such objection may not be considered by the Bankruptcy Court at the Confirmation Hearing. Such objection must be filed with the Bankruptcy Court and served so that it is **actually received** by the Bankruptcy Court and the following persons by no later than the Objection Deadline:

Counsel for Petitioning Creditors	Togut, Segal & Segal LLP One Penn Plaza, Suite 3335 New York, New York 10119 Attn: Kyle J. Ortiz, Esq. (kortiz@teamtogut.com) and Bryan M. Kotliar, Esq. (bkotliar@teamtogut.com)
Counsel for the Creditors' Committee	Dechert LLP 1095 Avenue of Americas New York, NY 10036 Attn: Stephen Zide, Esq. (stephen.zide@dechert.com) and David Herman, Esq. (david.herman@dechert.com)
The U.S. Trustee	Office of the United States Trustee – NYO Department of Justice Alexander Hamilton Custom House One Bowling Green New York, NY 10004 Attn: Daniel Rudewicz, Esq. (Daniel.Rudewicz@usdoj.gov)

VIII. RISK FACTORS TO BE CONSIDERED

HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN SHOULD READ AND CAREFULLY CONSIDER THE FOLLOWING FACTORS, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT AND THE PLAN (INCLUDING THEIR RESPECTIVE EXHIBITS / APPENDICES), BEFORE

DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. THIS INFORMATION, HOWEVER, DOES NOT DESCRIBE THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

The statements contained in this Disclosure Statement are made by the Plan Proponents as of the date hereof unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. The Plan Proponents have no duty to update this Disclosure Statement except as may be required by applicable law.

The Plan Proponents have relied upon information provided by the Debtors in connection with the preparation of this Disclosure Statement. Although the Plan Proponents have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not independently verified the information contained in this Disclosure Statement.

The contents of this Disclosure Statement should not be construed as legal, business, or tax advice, and nothing contained in the Plan will constitute an admission of, or be deemed evidence of, the tax or other legal effects of the Plan on the Plan Proponents or on Holders of Claims. Each Holder of a Claim should consult his, her, or its own legal counsel and accountant as to legal, tax, and other matters concerning his, her, or its Claim. This Disclosure Statement may not be relied upon for any purpose other than to determine whether to vote to accept the Plan.

A. Certain Bankruptcy Considerations

1. *Failure to Confirm the Plan*

If the Plan is not confirmed and consummated, there can be no assurance that the Chapter 11 Cases will continue rather than be converted to liquidation cases under chapter 7 of the Bankruptcy Code. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a plan and requires, among other things, that the value of distributions to dissenting creditors and shareholders not be less than the value of distributions such creditors and shareholders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

Although the Plan Proponents believe that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion or that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate resolicitation of votes.

2. *The Plan May Not be Accepted by Sufficient Holders of Impaired Claims*

The Plan is subject to a vote of Holders of Impaired Claims in voting Classes and to Confirmation by the Bankruptcy Court. Article VI hereof summarizes the numerous requirements for Confirmation of the Plan, including that the Plan must

be accepted by at least one Class of Impaired Claims. The Plan Proponents represent the majority of the holders of the Notes Claims, and are expected to support and vote in favor of the Plan. However, until all votes are collected, there can be no assurance that the requisite acceptances to confirm the Plan will be obtained. Thus, while the Plan Proponents believe that the Plan is confirmable under the standards set forth in section 1129 of the Bankruptcy Code, there is no guarantee that the Plan will be accepted by the requisite Classes entitled to vote on the Plan.

3. *Uncertainty of Extraterritorial Recognition of Plan Confirmation*

The Debtors are incorporated in Liberia and some of their interests are governed by the laws of foreign jurisdictions other than the United States. Although the Plan Proponents will make every effort to ensure that any Confirmation Order entered by the Bankruptcy Court and the steps taken pursuant to the Confirmation Order to implement the Plan are recognized and are effective in all applicable jurisdictions, it is possible that if a creditor or stakeholder were to challenge the Plan, a foreign court may refuse to recognize the effect of the Confirmation Order.

4. *No Assurance of Ultimate Recoveries*

There can be no assurances of the actual recoveries to the Debtors' claimholders. The Plan Proponents cannot assure the Debtors' claimholders that they will be able to resell any consideration received in respect of their claims at current values or at all.

5. *Classification and Treatment of Claims and Interests*

Section 1122 of the Bankruptcy Code requires that the Plan classify Claims against the Debtors. The Bankruptcy Code also provides that, except for certain Claims classified for administrative convenience, the Plan may place a Claim in a particular Class only if such Claim is substantially similar to the other Claims of such Class. The Plan Proponents believe that all Claims have been appropriately classified in the Plan.

To the extent that the Bankruptcy Court finds that a different classification is required for the Plan to be confirmed, the Plan Proponents may seek to (a) modify the Plan to provide for whatever classification might be required for confirmation, and (b) use the acceptances received from any creditor pursuant to the solicitation for the purpose of obtaining the approval of the Class or Classes of which such creditor ultimately is deemed to be a member. There can be no assurance that the Bankruptcy Court, after finding that a classification was inappropriate and requiring a reclassification, would approve the Plan based upon such reclassification without requiring the Plan Proponents to resolicit votes.

6. *Nonconsensual Confirmation*

In the event any impaired class of claims entitled to vote on a plan of reorganization does not accept a plan of reorganization, a bankruptcy court may nevertheless confirm such plan at the proponent's request if at least one impaired class

has accepted the plan (with such acceptance being determined without including the vote of any "insider" in such class), and as to each impaired class that has not accepted the plan, the bankruptcy court determines that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired classes.

7. *Non-Occurrence of Effective Date*

Although the Plan Proponents believe that the Effective Date will occur reasonably soon after the Confirmation Date, there can be no assurance as to such timing or as to whether it will occur. Moreover, if the conditions precedent to the Effective Date of the Plan are not met, the Plan may be vacated by the Bankruptcy Court.

8. *Risks of Failure to Satisfy Conditions Precedent*

Article IX of the Plan provides for certain conditions that must be satisfied (or waived) prior to the Confirmation Date and for certain other conditions that must be satisfied (or waived) prior to the Effective Date. Some of the conditions are outside of the Plan Proponents' control. There can be no assurance that any or all of the conditions in the Plan will be satisfied (or waived). Accordingly, even if the Plan is confirmed by the Bankruptcy Court, there can be no assurance that the Plan will be consummated. If the Plan is not consummated, there can be no assurance that the Chapter 11 Cases would not be converted to chapter 7 liquidation cases or that any new chapter 11 plan would be as favorable to Holders of Claims as the current Plan. Either outcome may materially reduce distributions to Holders of Claims.

9. *Distributions to Holders of Allowed Claims Under the Plan*

Projected distributions are based upon good faith estimates of the total amount of Claims ultimately Allowed and the funds available for distribution. Both the actual amount of Allowed Claims in a particular Class and the funds available for distribution for such Class may differ from the Plan Proponents' estimates. If the total amount of Allowed Claims in a Class is higher than the Plan Proponents' estimates or the funds available for distribution to such Class are lower than the Plan Proponents' estimates, the percentage recovery to holders of Allowed Claims in such Class will be less than projected.

10. *Funding Necessary for the Consummation of the Plan*

The Plan Proponents contemplate that all Cash necessary for Reorganized Holdings to make payments required by the Plan and for post-Confirmation operations shall be obtained from (a) existing Cash held by Reorganized Holdings on the Effective Date, (b) proceeds from the Rights Offering, and (c) the operations of Reorganized Holdings. To the extent the Plan obligates any other Debtor entities to make any payments or Distributions or take any other action under the Plan, the amount of such payments or Distributions or the cost of taking such actions shall be funded solely by Reorganized Holdings.

11. *Future Litigation*

Given the litigious history of these Chapter 11 Cases, there is a risk that new litigation claims may be asserted against Reorganized Holdings or the Backstop Parties. Future litigation could result in material judgement(s) against Reorganized Holdings. Such litigation, and any judgement in connection therewith, could have a material negative effect on Reorganized Holdings.

12. *Conversion to Chapter 7*

If the Bankruptcy Court finds that it would be in the best interests of the Holders of Claims, the Bankruptcy Court may convert the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed or elected to liquidate the Debtors' assets for distribution in accordance with the priorities under the Bankruptcy Code. The Plan Proponents believe that liquidation under chapter 7 would result in significantly smaller distributions being made to creditors than those provided in a Chapter 11 plan because of (a) the likelihood that assets would have to be sold in a disorderly fashion over a short period of time, rather than reorganizing or selling the business as a going concern at a later time in a controlled manner, (b) additional administrative expenses involved in the appointment of a chapter 7 trustee, and (c) additional expenses and claims, including claims resulting from the rejection of certain executory contracts and unexpired leases in connection with the cessation of operations.

B. Risk of Variance in Financial Results

1. *Reorganized Holdings May Not Be Able to Achieve Their Anticipated Financial Results*

Actual financial results may differ materially from anticipated results. If Reorganized Holdings does not achieve projected revenue or cashflow levels, Reorganized Holdings may lack sufficient liquidity to continue operating their business consistent after the Effective Date.

2. *Projections are Subject to Inherent Uncertainty Due to the Numerous Assumptions Upon Which They Are Based*

Unanticipated events and circumstances occurring subsequent to the approval of this Disclosure Statement and/or Confirmation of the Plan by the Bankruptcy Court may affect the actual financial results of Reorganized Holdings' operations. Actual results achieved may vary from anticipated results.

C. Risks Related to Reorganized Equity Issued Under the Plan

1. *Market for Reorganized Equity*

There is currently no market for the Reorganized Equity and there can be no assurance as to the development or liquidity of any market for such equity. Moreover, while a public listing of the Reorganized Equity may be pursued to be

effective on the Effective Date, there can be no assurance that the Reorganized Equity will be listed or traded on any securities exchange or any over-the-counter market on or after the Effective Date. If a trading market does not develop, is not maintained, or remains inactive, holders of the Reorganized Equity may experience difficulty in reselling such Reorganized Equity or may be unable to sell them at all. Even if such a market were to exist, such Reorganized Equity could trade at prices higher or lower than the estimated value set forth in this Disclosure Statement depending upon many factors including, without limitation, prevailing interest rates, markets for similar Reorganized Equity, industry conditions, and the performance of, and investor expectations for, Reorganized Holdings. Accordingly, holders of the Reorganized Equity may bear certain risks associated with holding securities for an indefinite period of time.

Furthermore, persons to whom the Reorganized Equity is issued under the Plan may prefer to liquidate their investments rather than hold such Reorganized Equity on a long-term basis. Accordingly, the market price for such Reorganized Equity could decline and any market that does develop for such Reorganized Equity may be volatile.

2. *Potential Dilution*

The ownership percentage represented by the Reorganized Equity distributed under the Plan as of the Effective Date to the applicable General Unsecured Claimholders that elect to exercise Rights Offering Subscription Rights shall be subject to dilution from the Rights Offering, the Backstop Premium, and the EIP. In the future, additional equity financings or other equity issuances by Reorganized Holdings may dilute the economic and voting rights of its existing Holders and could materially adversely affect the value of the Reorganized Equity.

3. *A Small Number of Holders Will Own a Significant Percentage of the Reorganized Equity*

Consummation of the Plan will result in a small number of Holders owning a significant percentage of the Reorganized Equity. Accordingly, these Holders may, among other things, have significant influence over the business and affairs of Reorganized Holdings.

D. Additional Factors

1. *Certain Information Herein Was Provided by the Debtors and Relied Upon by the Plan Proponents' Advisors*

Counsel to and other advisors retained by the Plan Proponents have relied upon information provided by the Debtors, as well as information obtained from discovery, in connection with the preparation of this Disclosure Statement and the Plan. Although counsel to and other advisors retained by the Plan Proponents have attempted to verify the information contained herein, certain statements rely on documents and representations received from the Debtors. The Debtors' records are incomplete, and the Debtors and certain other parties did not fully comply with

discovery requests. Although the Plan Proponents have undertaken great efforts to provide accurate and complete information in this Disclosure Statement, the Plan Proponents cannot warrant or represent that the information contained herein is complete and accurate.

The statements contained in this Disclosure Statement are made by the Plan Proponents as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has not been a change in the information set forth herein since that date. While the Plan Proponents have used their reasonably diligent efforts to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Plan Proponents nonetheless cannot, and do not, confirm the current accuracy of all statements appearing in this Disclosure Statement.

The financial information contained in this Disclosure Statement has not been audited unless explicitly stated otherwise. In preparing this Disclosure Statement, the Plan Proponents have relied predominantly on financial data derived from the Debtors' books and records that was available at the time of such preparation, together with information gathered through discovery. While the Plan Proponents believe that the financial information received from the Debtors' and relied upon in preparing this Disclosure Statement fairly reflects the financial condition of the Debtors, the Plan Proponents are unable to warrant or represent that the financial information contained herein and attached hereto is without inaccuracies.

2. *No Admissions Are Made by this Disclosure Statement*

The information and statements contained in this Disclosure Statement will neither constitute an admission of any fact or liability by the Plan Proponents nor be deemed evidence of the tax or other legal effects of the Plan on the Debtors, Holders of Allowed Claims or any other parties in interest. Except as otherwise provided in the Plan, the vote by a Holder of an Allowed Claim for or against the Plan does not constitute a waiver or release of any Claims or rights of the Plan Proponents to object to that Holder's Claim, or recover any preferential, fraudulent or other voidable transfer or assets, regardless of whether any Claims or Causes of Action of the Debtors or their estates are specifically or generally identified herein.

In addition, no reliance should be placed on the fact that a particular litigation Claim or projected objection to a particular Claim is, or is not, identified in this Disclosure Statement. The Plan Proponents may seek to investigate, file, and prosecute objections to Claims and may object to Claims after the Confirmation or Effective Date of the Plan irrespective of whether this Disclosure Statement identifies such Claims or objections to Claims.

IX. CERTAIN SECURITIES LAW MATTERS

A. Issuance of the Reorganized Equity Under Section 1145 of the Bankruptcy Code and Backstop Premium Exemption

Except as expressly provided herein, all Reorganized Equity and Rights

Offering Subscription Rights issued upon exercise of the Rights Offering Subscription Rights will be issued without registration under the Securities Act or any similar federal, state, or local law in reliance upon either (1) section 1145 of the Bankruptcy Code or (2) section 4(a)(2) of the Securities Act or Regulation D or Regulation S promulgated thereunder.

The Reorganized Equity and Rights Offering Subscription Rights issued upon exercise of the Rights Offering Subscription Rights offered to General Unsecured Claimholders on account of their respective Claims and in connection with the Rights Offering are expected to be issued without registration under the Securities Act or any similar federal, state, or local law in reliance on section 1145(a) of the Bankruptcy Code; provided that if the Plan Proponents determine, in consultation with the Creditors' Committee, that section 1145 of the Bankruptcy Code is not available for all or any portion of the Rights Offering, then the Reorganized Equity issued upon exercise of the Rights Offering Subscription Rights offered to General Unsecured Claimholders will be made pursuant to exemptions from registration under applicable securities laws.

The Reorganized Equity issued on account of the Backstop Premium is expected to be issued pursuant to the exemption from registration set forth in section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder.

In general, securities issued under section 1145 of the Bankruptcy Code may be resold without registration unless the recipient is an "underwriter" with respect to those securities. The Rights Offering Subscription Rights and the Reorganized Equity issued pursuant to the exemption from registration set forth in section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder will be considered "restricted securities" and may not be transferred except pursuant to an effective registration statement under the Securities Act or an available exemption therefrom.

B. Resale of Reorganized Equity; Definition of Underwriter

Section 1145(b)(1) of the Bankruptcy Code defines an "underwriter" as one who, except with respect to "ordinary trading transactions" of an entity that is not an "issuer": (1) purchases a claim against, interest in, or claim for an administrative expense in the case concerning, the debtor, if such purchase is with a view to distribution of any security received or to be received in exchange for such claim or interest; (2) offers to sell securities offered or sold under a plan for the holders of such securities; (3) offers to buy securities offered or sold under a plan from the holders of such securities, if such offer to buy is (a) with a view to distribution of such securities and (b) under an agreement made in connection with the plan, with the consummation of the plan, or with the offer or sale of securities under the plan; or (4) is an issuer of the securities within the meaning of section 2(a)(11) of the Securities Act. In addition, a person who receives a fee in exchange for purchasing an issuer's securities could also be considered an underwriter within the meaning of section 2(a)(11) of the Securities Act.

The definition of an "issuer" for purposes of whether a person is an underwriter under section 1145(b)(1)(D) of the Bankruptcy Code, by reference to section 2(a)(11) of the Securities Act, includes as "statutory underwriters" all persons who, directly or indirectly, through one or more intermediaries, control, are controlled

by, or are under common control with, an issuer of securities. The reference to "issuer," as used in the definition of "underwriter" contained in section 2(a)(11) of the Securities Act, is intended to cover "Controlling Persons" of the issuer of the securities. "Control," as defined in Rule 405 of the Securities Act, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. Accordingly, an officer or director of a reorganized debtor or its successor under a plan of reorganization may be deemed to be a "Controlling Person" of the debtor or successor, particularly if the management position or directorship is coupled with ownership of a significant percentage of the reorganized debtor's or its successor's voting securities. In addition, the legislative history of section 1145 of the Bankruptcy Code suggests that a creditor who owns ten percent or more of a class of securities of a reorganized debtor may be presumed to be a "Controlling Person" and, therefore, an underwriter.

Resales of the Reorganized Equity by entities deemed to be "underwriters" (which definition includes "Controlling Persons") are not exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law. Under certain circumstances, holders of Reorganized Equity who are deemed to be "underwriters" may be entitled to resell their Reorganized Equity pursuant to the limited safe harbor resale provisions of Rule 144 promulgated under the Securities Act. Generally, Rule 144 promulgated under the Securities Act would permit the public sale of securities received by such Person if the required holding period has been met and, under certain circumstances, current information regarding the issuer is publicly available and volume limitations, manner of sale requirements, and certain other conditions are met. Whether any particular Person would be deemed to be an "underwriter" (including whether the Person is a "Controlling Person") with respect to the Reorganized Equity, as applicable, would depend upon various facts and circumstances applicable to that Person. Accordingly, the Plan Proponents express no view as to whether any Person would be deemed an "underwriter" with respect to the Reorganized Equity and, in turn, whether any Person may freely resell their Reorganized Equity.

Unlike the securities that will be issued pursuant to section 1145(a)(1) of the Bankruptcy Code, any Reorganized Equity issued in reliance upon section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder will be deemed "restricted securities" that may not be offered, sold, exchanged, assigned, or otherwise transferred unless they are registered under the Securities Act or an exemption from registration under the Securities Act is available, including under Rule 144 or Rule 144A promulgated under the Securities Act.

Rule 144 provides an exemption for the public resale of "restricted securities" if certain conditions are met. These conditions vary depending on whether the holder of the restricted securities is an affiliate of the issuer. An affiliate is defined as "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the issuer."

A non-affiliate who has not been an affiliate of the issuer during the preceding three months may resell restricted securities after a six-month holding period

if at the time of the sale there is available certain current public information regarding the issuer, and may sell the securities after a one-year holding period whether or not there is current public information regarding the issuer. Adequate current public information is available for a reporting issuer if the issuer has filed all periodic reports required under section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, during the twelve months preceding the sale of the restricted securities. If the issuer is a non-reporting issuer, adequate current public information is available if certain information about the issuer is made publicly available. The Plan Proponents can provide no assurances that Reorganized Holdings will continue to be a reporting issuer or that current public information will be available to allow resales by non-affiliates when the six-month holding period expires (approximately six months after the emergence date).

An affiliate may resell restricted securities after the six-month holding period if at the time of the sale certain current public information regarding the issuer is available and may resell the securities after a one-year holding period whether or not there is current public information regarding this issuer, subject in each case to the additional requirements below. As noted above, the Plan Proponents can provide no assurances that this information requirement will be satisfied. The affiliate must also comply with the volume, manner of sale, and notice requirements of Rule 144. First, the rule limits the number of restricted securities (plus any unrestricted securities) sold for the account of an affiliate (and related persons) in any three-month period to the greater of one percent of the outstanding securities of the same class being sold, or, if the class is listed on a stock exchange, the greater of one percent of the average weekly reported volume of trading in such restricted securities during the four weeks preceding the filing of a notice of proposed sale on Form 144. Second, the manner of sale requirement provides that the restricted securities must be sold in a broker's transaction, which generally means they must be sold through a broker and handled as a routine trading transaction. The broker must receive no more than the usual commission and cannot solicit orders for the sale of the restricted securities except in certain situations. Third, if the sale in any three-month period exceeds 5,000 restricted securities or has an aggregate sale price greater than $50,000, an affiliate must file with the SEC three copies of a notice of proposed sale on Form 144. The sale must occur within three months of filing the notice unless an amended notice is filed.

The Plan Proponents believe that the Rule 144 exemption will not be available with respect to any Reorganized Equity issued in reliance upon section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder (whether held by non-affiliates or affiliates) until at least six months after the Effective Date. Accordingly, holders of such Reorganized Equity will be required to hold such Reorganized Equity for at least six months and, thereafter, to sell Reorganized Equity only in accordance with the applicable requirements of Rule 144, unless such Reorganized Equity is transferred pursuant to an effective registration statement or another available exemption from the registration requirements of the Securities Act.

The Reorganized Equity issued in connection with the Backstop Premium pursuant to Section 4(a)(2) and/or Regulation D will be issued in book-entry form and will bear a restrictive legend. Each book-entry representing, or issued in exchange for

or upon the transfer, sale, or assignment of, any such shares shall be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED ON [DATE OF ISSUANCE], HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY OTHER APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN AVAILABLE EXEMPTION FROM REGISTRATION THEREUNDER."

Reorganized Holdings reserves the right to require certification or other evidence of compliance with Rule 144 or another available exemption as a condition to the removal of such legend or to any resale of the Reorganized Equity issued in connection with the Backstop Premium pursuant to Section 4(a)(2) and/or Regulation D. Reorganized Holdings also reserves the right to stop the transfer of any such shares if such transfer is not in compliance with Rule 144 or another available exemption. Any person who receives such shares will be required to acknowledge and agree not to resell such securities except in accordance with Rule 144, when available, or another available exemption and that the securities will be subject to the other restrictions described above.

ANY PERSONS RECEIVING "RESTRICTED SECURITIES" UNDER THE PLAN ARE URGED TO CONSULT WITH THEIR OWN COUNSEL CONCERNING THE AVAILABILITY OF AN EXEMPTION FROM REGISTRATION FOR RESALE OF THESE SECURITIES UNDER THE SECURITIES ACT AND OTHER APPLICABLE LAW.

BECAUSE OF THE COMPLEX, SUBJECTIVE NATURE OF THE QUESTION OF WHETHER A PARTICULAR PERSON MAY BE AN UNDERWRITER OR AN AFFILIATE AND THE HIGHLY FACT-SPECIFIC NATURE OF THE AVAILABILITY OF EXEMPTIONS FROM REGISTRATION UNDER THE SECURITIES ACT, INCLUDING THE EXEMPTIONS AVAILABLE UNDER SECTION 1145 OF THE BANKRUPTCY CODE AND RULE 144 UNDER THE SECURITIES ACT, NONE OF THE PLAN PROPONENTS OR REORGANIZED HOLDINGS MAKE ANY REPRESENTATION CONCERNING THE ABILITY OF ANY PERSON TO DISPOSE OF THE SECURITIES TO BE DISTRIBUTED UNDER THE PLAN. POTENTIAL RECIPIENTS OF THE SECURITIES TO BE ISSUED UNDER THE PLAN ARE URGED TO CONSULT THEIR OWN COUNSEL CONCERNING WHETHER THEY MAY FREELY TRADE SUCH SECURITIES. POTENTIAL RECIPIENTS OF REORGANIZED EQUITY ARE URGED TO CONSULT THEIR OWN COUNSEL CONCERNING THEIR ABILITY TO FREELY TRADE SUCH SECURITIES WITHOUT COMPLIANCE WITH THE FEDERAL SECURITIES LAWS AND ANY APPLICABLE STATE LAW.

X. CONCLUSION AND RECOMMENDATION

The Plan Proponents believe that Confirmation and implementation of the Plan is preferable to any other alternative. The Plan Proponents urge all Holders of Claims entitled to vote to cast their Ballots to accept the Plan in accordance with the instructions provided herein and in the Solicitation Packages.

[Signature Page Follows]

Dated: July 8, 2024
New York, New York

Respectfully submitted,

TOGUT, SEGAL & SEGAL LLP

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Counsel for the Petitioning Creditors

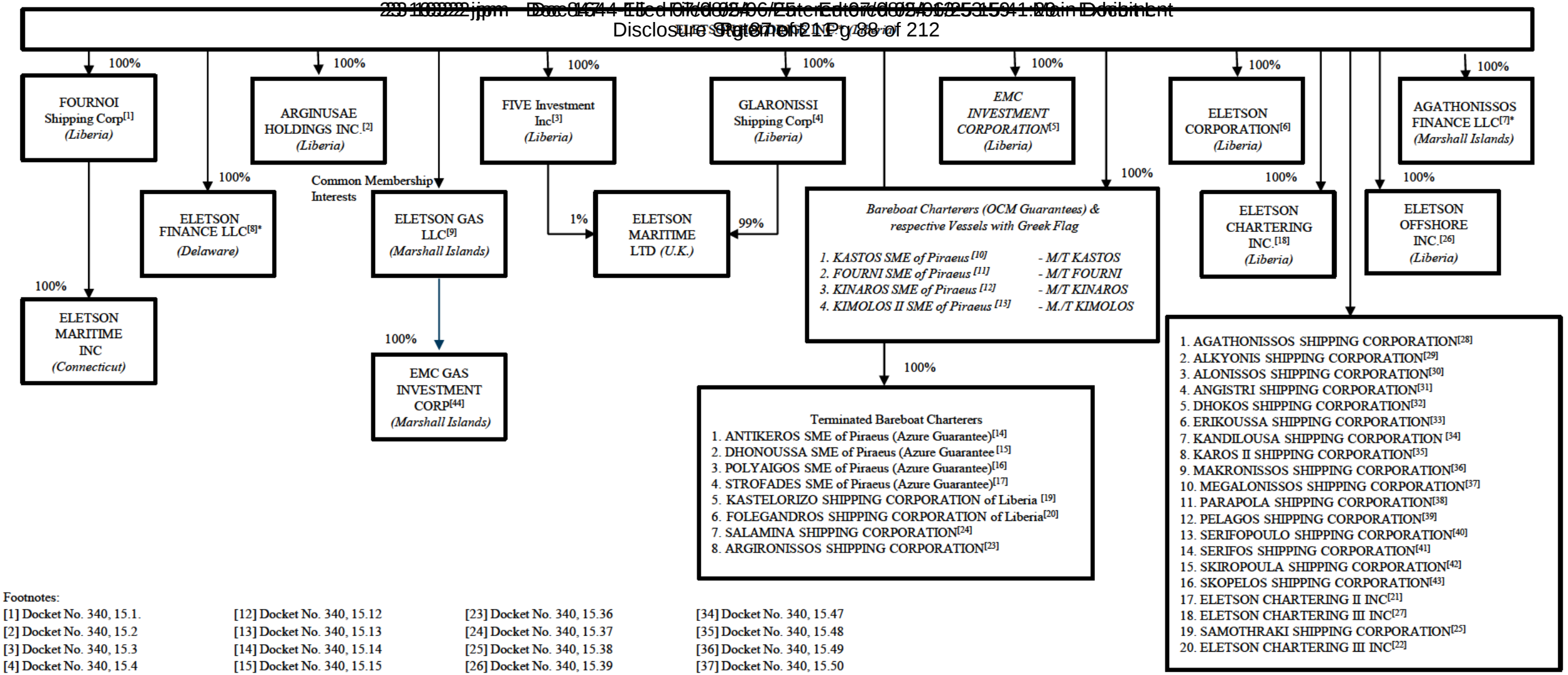
APPENDIX A

Petitioning Creditors' Amended Joint Chapter 11 Plan of Reorganization of Eletson Holdings Inc. and its Affiliated Debtors

[to be attached separately]

APPENDIX B

Corporate Organization Chart



Footnotes:

[1] Docket No. 340, 15.1.
[2] Docket No. 340, 15.2
[3] Docket No. 340, 15.3
[4] Docket No. 340, 15.4
[5] Docket No. 340, 15.5
[6] Docket No. 340, 15.6
[7] Docket No. 340, 15.7
[8] Docket No. 340, 15.8
[9] Docket No. 340, 15.9
[10] Docket No. 340, 15.10
[11] Docket No. 340, 15.11.
[12] Docket No. 340, 15.12
[13] Docket No. 340, 15.13
[14] Docket No. 340, 15.14
[15] Docket No. 340, 15.15
[16] Docket No. 340, 15.16
[17] Docket No. 340, 15.17
[18] Docket No. 340, 15.18
[19] Docket No. 340, 15.19
[20] Docket No. 340, 15.20
[21] Docket No. 340, 15.21
[22] Docket No. 340, 15.35
[23] Docket No. 340, 15.36
[24] Docket No. 340, 15.37
[25] Docket No. 340, 15.38
[26] Docket No. 340, 15.39
[27] Docket No. 340, 15.40
[28] Docket No. 340, 15.41
[29] Docket No. 340, 15.42
[30] Docket No. 340, 15.43
[31] Docket No. 340, 15.44
[32] Docket No. 340 15.45
[33] Docket No. 340, 15.46
[34] Docket No. 340, 15.47
[35] Docket No. 340, 15.48
[36] Docket No. 340, 15.49
[37] Docket No. 340, 15.50
[38] Docket No. 340, 15.51
[39] Docket No. 340, 15.52
[40] Docket No. 340, 15.53
[41] Docket No. 340, 15.54
[42] Docket No. 340, 15.55
[43] Docket No. 340, 15.56
[44] Docket No. 458 at ¶ 11

(*) Asterisk indicates entity is a Debtor in the Chapter 11 Cases (*i.e.*, Eletson Holdings Inc., Eletson Finance LLC, and Agathonissos Finance LLC)

APPENDIX C

Liquidation Analysis

LIQUIDATION ANALYSIS

I. Best Interests Test

Under the "best interests of creditors" test set forth in section 1129(a)(7) of the Bankruptcy Code, the Bankruptcy Court may not confirm a Chapter 11 plan unless, with respect to each impaired class of claims or interests, each holder of a claim or interest either (i) accepts the plan or (ii) receives or retains under the plan, on account of such claim or interest, property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated under Chapter 7 of the Bankruptcy Code on the effective date. *See* 11 U.S.C. § 1129(a)(7). Accordingly, to demonstrate that the Plan satisfies the "best interests of creditors" test, the Plan Proponents[1] have prepared the following hypothetical liquidation analysis (the "Liquidation Analysis") based upon certain assumptions discussed in the Disclosure Statement and in the accompanying notes to the Liquidation Analysis.

The Liquidation Analysis estimates potential cash distributions to holders of Allowed Claims and Interests in a hypothetical Chapter 7 liquidation of the Debtors' assets. Asset values discussed in the Liquidation Analysis may differ materially from values referred to in the Plan and Disclosure Statement. Batuta Capital Advisors LLC ("Batuta"), at the direction of the Plan Proponents, prepared the Liquidation Analysis.

THE LIQUIDATION ANALYSIS HAS NOT BEEN EXAMINED OR REVIEWED BY INDEPENDENT ACCOUNTANTS IN ACCORDANCE WITH STANDARDS PROMULGATED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS. ALTHOUGH THE PLAN PROPONENTS CONSIDER THE ESTIMATES AND ASSUMPTIONS SET FORTH HEREIN TO BE REASONABLE UNDER THE CIRCUMSTANCES, SUCH ESTIMATES AND ASSUMPTIONS ARE INHERENTLY SUBJECT TO SIGNIFICANT UNCERTAINTIES AND CONTINGENCIES BEYOND THE PLAN PROPONENTS' CONTROL. ACCORDINGLY, THERE CAN BE NO ASSURANCE THAT THE RESULTS SET FORTH IN THE LIQUIDATION ANALYSIS WOULD BE REALIZED IF THE DEBTORS WERE ACTUALLY LIQUIDATED PURSUANT TO CHAPTER 7 OF THE BANKRUPTCY CODE, ACTUAL RESULTS IN SUCH A CASE COULD VARY MATERIALLY FROM THOSE PRESENTED HEREIN, AND DISTRIBUTIONS AVAILABLE TO HOLDERS OF CLAIMS AND INTERESTS IN SUCH A CASE COULD DIFFER MATERIALLY FROM THE PROJECTED RECOVERIES SET FORTH IN THE LIQUIDATION ANALYSIS.

THE LIQUIDATION ANALYSIS IS A HYPOTHETICAL EXERCISE THAT HAS BEEN PREPARED FOR THE SOLE PURPOSE OF PRESENTING A REASONABLE, GOOD- FAITH ESTIMATE OF THE PROCEEDS THAT WOULD BE REALIZED IF THE DEBTORS WERE LIQUIDATED IN ACCORDANCE WITH CHAPTER 7 OF THE BANKRUPTCY CODE AS OF THE COMMENCEMENT DATE. THE LIQUIDATION ANALYSIS IS NOT INTENDED AND SHOULD NOT BE USED FOR ANY OTHER

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[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan or in the Disclosure Statement, to which the Liquidation Analysis is attached as an appendix.

PURPOSE. THE LIQUIDATION ANALYSIS DOES NOT PURPORT TO BE A VALUATION OF THE DEBTORS' ASSETS AS A GOING CONCERN, AND THERE MAY BE A SIGNIFICANT DIFFERENCE BETWEEN THE VALUES AND RECOVERIES REPRESENTED IN THE LIQUIDATION ANALYSIS AND THE VALUES THAT MAY BE REALIZED OR CLAIMS GENERATED IN AN ACTUAL LIQUIDATION. NOTHING CONTAINED IN THE LIQUIDATION ANALYSIS IS INTENDED TO BE, OR CONSTITUTES, A CONCESSION, ADMISSION, OR ALLOWANCE OF ANY CLAIM BY THE PLAN PROPONENTS. THE ACTUAL AMOUNT OR PRIORITY OF ALLOWED CLAIMS IN THE CHAPTER 11 CASES COULD MATERIALLY DIFFER FROM THE ESTIMATED AMOUNTS SET FORTH AND USED IN THE LIQUIDATION ANALYSIS. THE PLAN PROPONENTS RESERVE ALL RIGHTS TO SUPPLEMENT, MODIFY, OR AMEND THE ANALYSIS SET FORTH HEREIN.

The Liquidation Analysis should be read in conjunction with the foregoing notes and assumptions:

II. Summary Notes to Liquidation Analysis

A. Basis of Presentation

The Liquidation Analysis has been prepared assuming the Debtors converted their Chapter 11 Cases to Chapter 7 cases on June 30, 2024 (the "Commencement Date").

The Debtors have not issued audited financial statements since 2017. Further, to Batuta's knowledge, the Debtors have not provided any *Management Discussion and Analysis* since 2018, nor any material consolidated or subsidiary financial statements after December 30, 2023. As such, where noted below, Batuta has relied on unaudited financial information disclosed by the Debtors in the Chapter 11 Cases. Where appropriate and available, Batuta has relied on recognized third-party market data to inform its analysis.

The Liquidation Analysis assumes that the Debtors would be liquidated in a jointly administered and substantively consolidated proceeding.

B. Dependence on Assumptions

The Liquidation Analysis relies on multiple estimates and assumptions in identifying potential outcomes of a liquidation of the Debtors and their assets under Chapter 7 of the Bankruptcy Code. Given the historical volatility and the commodity nature of the petroleum product tanker market in which the Debtors operate, any estimates or projections are inherently subject to market uncertainties. In addition, historical spot rates have displayed significant volatility and wide ranges of daily rates—directly impacting the demand and value of transportation vessels such as the Debtors' tankers. The Liquidation Analysis is also based on Batuta's reasonable best judgment as to various assumptions and numerous uncertainties surrounding various legal challenges still ongoing. In addition, Batuta used its reasonable best efforts to account for costs associated with undertaking an expedited sale process of approximately three to six months. The Liquidation Analysis does not include the legal expenses or other costs that would be associated with the pursuit of various claims and causes of action belonging to the Debtors and their Estates or the collection of any resulting judgments.

As such, there can be no guarantee that the values presented in the Liquidation Analysis would be realized in the event an actual liquidation under Chapter 7 of the Bankruptcy Code was to be pursued. As such, the results of any actual Chapter 7 liquidation could vary materially and adversely from those contained herein.

The SMEs (as defined herein) are operated by the Debtors pursuant to finance leases with an end-of-term purchase option, which may not be exercisable by the Debtors if the agreement is terminated by the contract counterparty. Accordingly, in any actual Chapter 7 liquidation, to the extent that one or more of the applicable finance leases is terminated by the applicable contract counterparty, the Debtors may not be able to purchase one or more of the SMEs. In such scenarios, the Debtors may be unable recover some or all of the value ascribed to the SMEs set forth herein.

C. Additional Claims

The cessation of a business that would occur in a Chapter 7 liquidation would likely trigger additional claims that would not exist where the Debtors' business and assets continue as a going concern. Given that many, if not all, of the existing fleet owned and/or operated by Eletson Holdings or its subsidiaries are operated pursuant to finance leases or secured by debt, some of these claims could be significant and would potentially be entitled to priority payment over general unsecured claims. Any such priority claims would be required to be paid in full from the liquidation proceeds before any remaining proceeds would be available to pay the general unsecured claims. Although, Batuta has considered all of the limited data available from Debtors to ascertain those additional claims, it is not possible to guarantee that all potential claims have been accounted for, or the results of the outcome of any such claims.

Furthermore, in a Chapter 7 liquidation, it is possible that various counterparties assert various rights that would not exist in a going concern sale, such as the attempted termination of contract or other valuable rights. Because many of these rights exist at non-Debtor subsidiaries that would potentially not be protected by the provisions of the Bankruptcy Code (such as the automatic stay under section 362 of the Bankruptcy Code), there are substantial risks in a Chapter 7 liquidation that counterparties take or attempt to take actions that would result in materially less proceeds (and, in turn, less value for creditors) than that reflected herein.

D. Potential Causes of Action

In the Chapter 7 liquidation, a Chapter 7 trustee (the "Trustee") may elect to pursue various claims and causes of action belonging to the Debtors and their Estates. The Liquidation Analysis does not provide an estimate of the likely outcomes of any such claims, the costs and risks attendant to pursuing such claims, and the proceeds that might be realized (including after accounting for the risks of collectability, among other issues with enforcing any judgment).

E. Chapter 7 Liquidation Costs and Length of Process

Batuta has assumed that the initial phase of a liquidation would involve minimal business operations and would require the Trustee to oversee the handling of disposing

of remaining assets, including retaining a broker to assist in the liquidation of vessels, distribute available net proceeds and arrange for the closing of the Debtors' Estates. Given the aforementioned volatility of the value of the Debtors' assets, there can be no assurance either of the realized value nor the timing of completing such divestitures. As such, the realized recoveries in an actual liquidation can vary greatly from those presented in this analysis.

In a Chapter 7 liquidation, the Trustee's administrative expenses incurred with managing the liquidation process will be entitled to full payment, as well as a statutory commission on all distributions to creditors, prior to making any distribution to administrative and other priority claims in connection with the Chapter 11 Cases (and thereafter, if any remainder, to general unsecured claims). 11 U.S.C § 726.[2] Furthermore, the Debtors do not have any cash, and Batuta has limited information on what, if any, cash may be available from the Debtors' non-Debtor subsidiaries at the commencement of the liquidation process. With limited or no cash available, the Trustee might have to obtain alternate sources of financing and contingency arrangements that could significantly further reduce recoveries from that reflected herein.

Finally, Batuta has assumed that the Trustee will engage professionals related both to the sale(s) process(es) for the Debtors' tangible assets (such as their vessels owned by subsidiaries) as well as reviewing, analyzing, and investigating potential claims and causes of action against the Debtors' insiders and other third parties. The costs reflected herein do not include the costs and expenses associated with pursuing any such potential claims and causes of action. The Trustee may determine to withhold liquidation proceeds from creditors (thereby reducing or, at the minimum, delaying their recoveries until proceeds, if any, net of costs are recovered) to fund the costs and expenses associated with pursuing potential claims and causes of action. Alternatively, the Trustee may obtain litigation funding or contingency fee arrangements that may significantly reduce the amount of proceeds ultimately available on account of any such potential claims and causes of action that would otherwise be distributable to creditors.

The foregoing costs and risks imply that any sale(s) process(es) might take materially longer and cost materially more than the amounts reflected herein, further increasing administrative and priority claims and related amounts that would be paid prior to general unsecured creditors receiving any distribution. The costs and timing and duration of the Chapter 7 liquidation are currently unknown, but the Liquidation Analysis reflected herein reflects Batuta's reasonable best judgment as to what creditors might recover—actual results are subject to change and may vary significantly.

The Liquidation Analysis assumes a process of approximately three to six months from the Commencement Date to conduct the orderly disposition of substantially all of the Debtors' assets (excluding the pursuit of various claims and causes of action belonging

[2] The Bankruptcy Court may allow reasonable compensation for the Trustee's services on a sliding scale based upon all moneys disbursed or turned over in the liquidation proceedings, by the Trustee. 11 U.S.C. § 326. For purposes of the Liquidation Analysis, these fees are estimated at 3% of the estimated gross liquidation proceeds.

to the Debtors and their Estates and the collection of any resulting judgments), arrange for distributions, and wind-down the Debtors' Estates.

F. Broker Fees

Liquidation of the Debtors' assets (namely liquified petroleum product tankers) would likely require a broker to conduct an auction process. Batuta has assumed that a broker and other associated fees related to the sale(s) process(es) for the Debtors' vessels of 5% of the Gross Transaction Value. Given the illiquidity of these assets, there can be no assurance that actual proceeds received (and therefore, creditors' recoveries) will equal those amounts reflected herein.

G. Claims Estimates

Claims are estimated based upon known liabilities as of May 2024 using the Debtors' schedules and statements as well as proofs of claim filed in these Chapter 11 Cases. For an explanation of these matters, please see the Disclosure Statement to which the Liquidation Analysis is attached.

H. Conclusion

Batuta has concluded that, based on the analysis presented herein, confirmation of the Plan Proponents' Plan included herewith, will provide creditors with a recovery that is not less than what they would otherwise receive pursuant to a hypothetical liquidation of the Debtors under Chapter 7 of the Bankruptcy Code.

Liquidation Analysis

Vessel Name	Type	Year Built	Shipyard	DWT	Class	Market Value[1]	Liquidation Discount Low	Liquidation Discount Base	Liquidation Discount High	Implied Liquidation Discount Low	Implied Liquidation Discount Base	Implied Liquidation Discount High	Liquidation Value before fees Low	Liquidation Value before fees Base	Liquidation Value before fees High
Fourni	HandyMax	2010	Hyundai Mipo Dockyard, S. Korea	51600	MR	26,563,261	25%	20%	15%	19,922,446	21,250,609	22,578,772	19,922,446	21,250,609	22,578,772
Kastos	HandyMax	2010	Hyundai Mipo Dockyard, S. Korea	51900	MR	25,864,665	25%	20%	15%	19,398,499	20,691,732	21,984,965	19,398,499	20,691,732	21,984,965
Kimolos	HandyMax	2010	Hyundai Mipo Dockyard, S. Korea	51500	MR	28,080,000	25%	20%	15%	21,060,000	22,464,000	23,868,000	21,060,000	22,464,000	23,868,000
Kinaros	HandyMax	2009	Hyundai Mipo Dockyard, S. Korea	51600	MR	27,010,000	25%	20%	15%	20,257,500	21,608,000	22,958,500	20,257,500	21,608,000	22,958,500
													80,638,444	**86,014,340**	**91,390,237**
Estimated Remaining OCM Leases & Other SME Liabilities													(53,300,000)	(53,300,000)	(53,300,000)
Ch.7 Trustee Fee[4]							3%	3%	3%				(2,419,153)	(2,580,430)	(2,741,707)
Ch.7 Professional Fees[5]													(5,000,000)	(4,500,000)	(4,000,000)
Broker Fee & Other Fees							5%	5%	5%				(4,031,922)	(4,300,717)	(4,569,512)
US Trustee Fees[6]							0.8%	0.8%	0.8%				(645,108)	(688,115)	(731,122)
Distributable Value to Creditors													**15,242,261**	**20,645,079**	**26,047,896**

	Recovery Waterfall Low	Recovery Waterfall Base	Recovery Waterfall High
Priority & Administrative Claims	**26,200,000**	**27,200,000**	**28,200,000**
recovery	*58%*	*76%*	*92%*
Remaining Value to GUCs	**(10,957,739)**	**(6,554,921)**	**(2,152,104)**
General Unsecured Claims	768,479,112	637,229,112	505,979,112
recovery	*0.0%*	*0.0%*	*0.0%*

Notes:
1) Vessel 3rd party market value assessment (VesselsValue.com 5/7/2024); adjusted for estimated spot vs. time charter rates through lease period
2) See Debtors' Valuation Analysis, filed on May 14, 2024 [Docket No. 687]
3) 3rd Amended 2015.3 filings
4) 11 U.S.C § 326
5) Includes general administration of estates and review / investigation of potential claims; does not include cost of pursuing claims
6) https://www.justice.gov/ust/chapter-11-quarterly-fees

III. Specific Notes to Liquidation Analysis

In addition to the footnotes set forth in the Liquidation Analysis above, the following contain additional notes to the Liquidation Analysis.

A. Special Maritime Enterprise Vessels

The principal assets of the Debtors are 4 MR class tankers that are secured by Bareboat Charters, and operate under four separate Special Maritime Enterprises (the "SMEs"): Kastos Special Maritime Enterprise ("Kastos"), Fourni Special Maritime Enterprise ("Fourni"), Kinaros Special Maritime Enterprise ("Kinaros"), Kimolos II Special Maritime Enterprise ("Kimolos"). All vessels are encumbered. Estimated recoveries are based on independent third-party market assessments, which have been reduced by 15% in the "high" scenario and 25% in the "low" scenario based on an accelerated sale of assets under a Chapter 7 proceeding which will be perceived to be highly distressed. In addition, additional allowances for the Trustee and professional fees, broker and other fees, and U.S. Trustee Fees to account for the potential of depressed valuations in an unfunded time-sensitive liquidation.

B. Cash

The latest (unaudited) financial information received in the *Debtors' Second Periodic Report Pursuant to Bankruptcy Rule 2015.3*, filed on February 12, 2024 [Docket No. 409] (the "2015.3 Report") for the period ending on December 31, 2023. At such time, none of the SMEs had reported material cash balances (collectively less than $100,000 USD). As such, Batuta deemed these unlikely to be collected and an immaterial outcome of the Liquidation Analysis.

C. Other Current Assets

The latest (unaudited) financial information received in the 2015.3 Report relates to the period ending on December 31, 2023. As stated above, Batuta deemed other current assets unlikely to be collected and an immaterial outcome of the Liquidation Analysis.

D. Litigation Claims

As noted in the Disclosure Statement included herewith, the Debtors and their non- Debtor subsidiaries will retain various claims and causes of action, including relating to Eletson Gas, LLC ("Eletson Gas"), Levona Holdings, Ltd. ("Levona"), and others. Given the costs and risks associated with such claims and causes of action, the Liquidation Analysis does not provide an estimate of (i) the fees and expenses needed to bring those claims and causes of action, including, among others, issues associated with collectability and enforcement of any judgments, and (ii) the gross recovery resulting from those claims and causes of action (if any).

E. Land, Buildings & Other PP&E

The latest (unaudited) financial information received in the 2015.3 Report for the period ending on December 31, 2023. As of that date, none of the SMEs reported any Fixed Assets or PP&E in addition to vessels.

F. Non-Special Maritime Enterprise Subsidiaries

Pursuant to the 2015.3 Report, all of the non- subsidiaries with the exception of Eletson Gas were deemed to be insolvent.

G. Intercompany Receivables

As stated above, for the purposes of the Liquidation Analysis any current or potential future claims arising from Intercompany transactions are treated as potential claims and are not assigned value in the Liquidation Analysis.

H. Payables & Current Liabilities

Given the independent operating structure of the SMEs, the Liquidation Analysis assumes that the SME's payables and current liabilities are satisfied from liquidation proceeds before any distributions to Claims of the Debtors. The remaining SMEs' lease obligations are accounted for in the Estimated Recovery Lease Obligations.

I. Wind-Down Expenses

Wind-Down Expenses include the non-resource related costs to wind down the Debtors' Estates after the Commencement Date, including, but not limited to any costs to maintain and repair the Debtors' assets, payments for any utilities, insurance, fuel, taxes, and other overhead costs.

J. Hypothetical Recoveries by Class

- Administrative Claims: For the purposes of the Liquidation Analysis, Administrative Claims include Claims for costs and expenses of administration of the Chapter 11 Cases, including Professional Fee Claims, U.S. Trustee Claims, Fees under section 503(b) of the Bankruptcy Code (including the Petitioning Creditors' section 503(b)(3)(A) claims [Docket Nos. 265, 322], the 2022 Notes Trustee's section 503(b)(3)(A) claim [Docket No. 323], and New Agathonissos Finance's ("NAF") section 503(b)(3)(A) claim [Docket No. 324]. The Liquidation Analysis concludes that Holders of Administrative Claims are not likely to be paid in full in a Chapter 7 liquidation.

- Priority Claims: The Liquidation Analysis concludes that Holders of Priority Claims are not likely to be paid in full in a Chapter 7 liquidation.

- Other Priority Claims: The Plan Proponents are not aware of any Other Priority Claims against the Debtors. Accordingly, the Liquidation Analysis concludes

that, to the extent there are any Other Priority Claims, Holders of Other Priority Claims are not likely to be paid in full in a Chapter 7 liquidation.

- Secured Claims: The Plan Proponents are not aware of any Secured Claims against the Debtors other than the Claims filed by the Azure Claimants (as defined in the Disclosure Statement) [Proof of Claim Nos. 9-1, 10-1, 11-1, 12-1] (the "Azure Guaranty Claims"), which are secured by certain collateral. In a Chapter 7 liquidation, the Liquidation Analysis concludes (i) Holders of Azure Guaranty Claims will receive their collateral in satisfaction of such Secured Claims and (ii) to the extent there are any Secured Claims other than the Azure Guaranty Claims, Holders of any such Secured Claims will likely be paid in full.

- General Unsecured Claims: In a Chapter 7 liquidation, the Liquidation Analysis concludes that Holders of General Unsecured Claims would not receive any recovery in a Chapter 7 liquidation.

  For purposes of a hypothetical Chapter 7 liquidation, the term "General Unsecured Claims" means, collectively, any Claim against any Debtor as of the Petition Date that is neither secured by collateral nor entitled to priority under the Bankruptcy Code, including, among others, the Old Notes Claims, the 2022 Notes Claims, the Claims filed by NAF [Proof of Claim No. 13-1], the Azure Guaranty Claims, and Convenience Claims. In addition, the "low" end of the recovery range includes the claim asserted by Levona [Proof of Claim No. 21-1] (the "Levona Claim"); in the "high" end of the recovery range, the Levona Claim is excluded.

- Convenience Claims: In a Chapter 7 liquidation, the Convenience Claims would be treated as General Unsecured Claims.

- OCM Guaranty Claims: In a Chapter 7 liquidation, the OCM Guaranty Claims would be treated as General Unsecured Claims; however, such OCM Guaranty Claims are contingent and not expected to require any recovery from the distributions made by the Trustee on account of claims against the Debtors.

- Subordinated Claims: The Liquidation Analysis concludes that Holders of Subordinated Claims will likely receive no recovery in a Chapter 7 liquidation.

- Intercompany Claims: The Liquidation Analysis concludes that Holders of Intercompany Claims will likely receive no recovery in a Chapter 7 liquidation.

- Intercompany Interests: The Liquidation Analysis concludes that Holders of Intercompany Interests will likely receive no recovery in a Chapter 7 liquidation.

- Existing Equity Interests: The Liquidation Analysis concludes that Holders of Existing Equity Interests will likely receive no recovery in a Chapter 7 liquidation.

APPENDIX D

Financial Projections

FINANCIAL PROJECTIONS

I. Introduction

In connection with the negotiation and development of the Plan[1], and for the purpose of determining whether the Plan meets the feasibility standard outlined in section 1129(a)(11) of the Bankruptcy Code, Batuta Capital Advisors LLC ("Batuta"), at the direction of the Plan Proponents, prepared financial projections (the "Projections"). Batuta analyzed Reorganized Holdings' ability to satisfy its financial obligations while maintaining sufficient liquidity and capital resources and projected these forward during the Projection Period (as defined below). With limited access to recent financial data provided by the Debtors, Batuta prepared consolidated financial projections for the years ending December 31, 2024 through December 31, 2029 (the "Projection Period").

The Plan Proponents believe that the Plan meets the feasibility requirements, as Confirmation is not likely to be followed by liquidation or the need for further financial reorganization of Reorganized Holdings or any successors under the Plan.

The Projections are based on a number of assumptions by Batuta with respect to the future performance of the assets currently held by the Debtors, namely, the four (4) special maritime entity subsidiaries ("SMEs") constituting the principal tangible assets of Reorganized Holdings. Certain assumptions were based on information available to Batuta, including information derived from public sources that have not been independently verified. No representations or warranties, express or implied, are provided in relation to the fairness, accuracy, correctness, completeness, or reliability of the information, opinions, or conclusions expressed herein.

The likelihood, and related financial impact, of a change in any of these factors cannot be predicted with certainty. Consequently, actual financial results could differ materially from the Projections. The Projections assume the Plan will be implemented in accordance with its stated terms and Reorganized Holdings will emerge from Chapter 11 as contemplated therein. The Projections should be read in conjunction with the assumptions and qualifications contained herein and as set out in the Disclosure Statement.

The Projections present, to the best of Batuta's knowledge and belief, Reorganized Holdings' projected financial position, results of operations, and cash flows for the Projection Period and reflect Batuta's assumptions and judgments of the projections based on an assumed emergence date of July 31, 2024 (the "Assumed Effective Date"). Although Batuta believes that these assumptions are reasonable under current circumstances, such assumptions are subject to inherent uncertainties, including, but not limited to:

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[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan or in the Disclosure Statement, to which the Financial Projection is attached as an appendix.

- Upward or downward changes in product tanker demand;
- Highly volatile charter rates;
- Changes in environmental standards and requirements;
- Geopolitical uncertainty in markets in which Reorganized Holdings and its subsidiaries will conduct business;
- Supply and demand dynamics in the crude oil and petroleum products markets and the resulting volatility in prices;
- Significant weather events impacting shipping in markets in which Reorganized Holdings and its subsidiaries will conduct business;
- Inherent risks associated with operating product tanker vessels;
- The impact of economic conditions outside of the control of Reorganized Holdings' and its subsidiaries control and any corresponding impact on charter rates;
- Reorganized Holdings' and its subsidiaries' ability to generate sufficient cash to service debt to which any one or more of them may be a party post the Assumed Effective Date;
- Reorganized Holdings' and its subsidiaries' ability to comply with any financial covenants contained in debt agreements to which any one or more of them may be a party post-Assumed Effective Date;
- Changes in interest rates;
- Regulatory changes and judicial rulings impacting Reorganized Holdings' and its subsidiaries' businesses;
- Adverse results from litigation, governmental investigations, or tax related proceedings or audits, whether initiated prior or subsequent to the Assumed Effective Date;
- Reorganized Holdings' and its subsidiaries' ability to maintain and/or enter into agreements with customers;
- Reorganized Holdings' and its subsidiaries' reliance on third-party vendors for various goods or services;
- Other events beyond the control of Reorganized Holdings and its subsidiaries that may result in unexpected adverse operating results;
- The possibility that the Bankruptcy Court does not confirm the Plan or the Assumed Effective Date does not timely occur as projected herein; and
- The risks related to other parties objecting to the Plan and the resulting cost and expense of delays in the Chapter 11 Cases.

The Projections contain certain forward-looking statements, all of which are based on various estimates and assumptions. Such forward-looking statements are subject to inherent uncertainties and to a wide variety of significant business, economic, and competitive risks, including those summarized herein. When used in the Projections, the words "anticipate," "believe," "estimate," "will," "may," "intend," and "expect" and similar expressions generally identify forward-looking statements. Although the Plan Proponents believe that their plans, intentions, and expectations reflected in the forward-looking statements are reasonable, the Plan Proponents cannot be sure that they will be achieved. These statements are only predictions and are not guarantees of future performance or results. Forward-looking statements are subject to risks and

uncertainties that could cause actual results to differ materially from those contemplated by a forward-looking statement. Forward-looking statements speak only as of the date on which they are made. Except as required by law, the Plan Proponents expressly disclaim any obligation to update any forward-looking statement, whether as a result of new information, future events, or otherwise.

THE PROJECTIONS WERE NOT PREPARED WITH A VIEW TOWARDS COMPLIANCE WITH PUBLISHED GUIDELINES OF THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION OR GENERALLY ACCEPTED ACCOUNTING PRINCIPLES ("GAAP") IN THE UNITED STATES. FURTHERMORE, THE PROJECTIONS HAVE NOT BEEN (A) AUDITED OR REVIEWED BY A REGISTERED INDEPENDENT PUBLIC ACCOUNTING FIRM OR (B) CONFIRMED WITH THE DEBTORS.

THE PROJECTIONS, WHILE PRESENTED WITH NUMERICAL SPECIFICITY, ARE BASED UPON MULTIPLE ESTIMATES AND ASSUMPTIONS WHICH MAY NOT BE REALIZED AND ARE SUBJECT TO SIGNIFICANT BUSINESS, ECONOMIC, AND COMPETITIVE UNCERTAINTIES AND CONTINGENCIES WHICH ARE RECOGNIZED BY BATUTA TO BE BEYOND ITS CONTROLTO FULLY ASSESS. CONSEQUENTLY, THE PROJECTIONS SHOULD NOT BE REGARDED AS A REPRESENTATION OR WARRANTY BY BATUTA, OR ANY OTHER PERSON AS TO THE ACCURACY OF THE PROJECTIONS OR THAT THE PROJECTIONS WILL BE REALIZED BY REORGANIZED HOLDINGS, POST THE ASSUMED EFFECTIVE DATE. ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THOSE PRESENTED IN THE PROJECTIONS. HOLDERS OF CLAIMS MUST MAKE THEIR OWN ASSESSMENT AS TO THE REASONABLENESS OF SUCH ASSUMPTIONS AND THE RELIABILITY OF THE PROJECTIONS IN MAKING THEIR DETERMINATION OF WHETHER TO ACCEPT OR REJECT THE PLAN.

II. Current Business Description

The Debtors are an integrated owner, operator, and manager of a fleet of product tankers and LPG/LEG carriers specializing in the transport of refined petroleum products, liquefied petroleum gas ("LPG") and ammonia (NH3). The Debtor(s) have offices located in Piraeus, London, and Stamford, Connecticut and charter its fleet to customers including major international oil, LPG, ammonia (NH3), ethylene and other petrochemical gases ("LEG") companies and traders.

The Debtors' product tanker vessels are capable of carrying a wide range of petroleum products, such as fuel oil and vacuum gas oil (often referred to as "dirty products') and gas oil, gasoline, jet fuel, kerosene and naptha (often referred to as "clean products"), and crude oil.

The Debtors own 100% of the common units in Eletson Gas LLC, which owns handy-sized semi-ref and medium-sized fully ref LPG/LEG carriers, which are gas carriers that transport LPG, ammonia (NH3), ethylene, and other petrochemical gases. LPG, which consists of propane and butane, is a clean and efficient source of energy used as a heating, cooking, and transportation fuel and as a petrochemical and refinery feedstock,

while ammonia is mainly used in the agricultural industry as a fertilizer and ethylene is a feed stock material.

III. Summary of Significant Assumptions and Basis for Presentation

The Projections were developed by Batuta using assumptions based on limited information for the revenues and costs of the Debtors' and their subsidiaries' current business and projecting such assumptions forward for the Projection Period as to Reorganized Holdings and its subsidiaries. Batuta considered the following factors in developing the Projections:

- Current and projected market conditions in each of the respective markets in which the Debtors and their subsidiaries are currently active and believe Reorganized Holdings and its subsidiaries will remain active;
- Ability to sufficiently fund debt service payments;
- Capital expenditures needed, based on historic capital expenditures, to keep the vessel fleet in class post-Assumed Effective Date;
- Ability to realize sufficient charter rates to cover vessel operating expenditures and general and administrative expenses;
- No foreseeable material acquisitions or divestitures;
- The Debtors' emergence from Chapter 11 as Reorganized Holdings on or around the Assumed Effective Date.

The Projections do not set forth expenses related to the pursuit of various claims and causes of action belonging to the Debtors and their Estates or any proceeds derived therefrom (if any).

The Projections have been prepared in good faith and are based upon assumptions believed to be reasonable, including those set out under the Plan. The Projections include assumptions with respect to unaudited and in some cases dated financial accounts of the Debtors.

IV. Projected Cash Flow Statement and Balance Sheet Assumptions

EBITDA: EBITDA is measured as earnings (defined as total vessel operating revenue less vessel operating expenses, as described below) before interest, taxes, depreciation, and amortization. Pro Forma EBITDA is not a measurement of operating performance computed in accordance with GAAP and should not be considered as a substitute for net income (loss) prepared in conformity with GAAP. In addition, Pro Forma EBITDA may not be comparable to similarly titled measures of other companies. Batuta believes that these non-GAAP financial measures are important indicators of the future operations of the respective Reorganized Holdings and provide a baseline for analyzing Reorganized Holdings' underlying business. EBITDA, broadly defined, is a metric used by the financial community to provide insight into an organization's operating trends and to facilitate comparisons between peer companies, since interest, taxes, depreciation, and amortization can differ greatly between organizations as a result of differing capital structures and tax strategies.

Leveraged Free Cash Flow: Leveraged Free Cash Flow is the free cash flow that remains after Reorganized Holdings has paid their obligations on their debt—both interest and principal repayments. Leveraged Free Cash Flow is not a measurement of operating performance computed in accordance with GAAP and should not be considered as a substitute for cash flow from operations prepared in conformity with GAAP. In addition, Leveraged Free Cash Flow may not be comparable to a similarly titled measure of other companies. Batuta believes that this cash flow measure provides investors and holders of Claims with a relevant measure of liquidity and a useful basis for assessing Reorganized Holdings' ability to fund their activities and obligations post-emergence from these Chapter 11 Cases.

Capex: Capital expenditures ("Capex") include the Plan Proponents' estimates of maintenance and growth Capex.

Chapter 11 Professional Services Fees and D&O Insurance: Chapter 11 professional services and other fees as well as D&O insurance related to post-Assumed Effective Date chapter 11 filings and activities until the close of the Chapter 11 Cases.

V. Financial Assumptions/Projections

The future results of Reorganized Holdings are dependent upon various factors, many of which are beyond the control or knowledge of the Plan Proponents, and consequently are inherently difficult to project. Reorganized Holdings' actual future result may differ materially from the Projections and as a result, the actual total value of Reorganized Holdings may be significantly higher or lower than the estimated range herein. *See* Disclosure Statement ("Risk Factors").

The following summarizes the underlying key financial assumptions upon which the Projections were based.

1. Voyage Revenue

Reorganized Holdings will derive operating revenue primarily from the operation of four MR class product tankers ("Voyage Revenue"). Voyage Revenue primarily includes revenues from spot charters and time charters. Spot market revenues are recognized ratably over the duration of the spot market voyages from loading to discharge of the cargo and time charter revenues over the duration of the time charters. Reorganized Holdings and its subsidiaries also generate demurrage revenue, which represent fees charged to charterers associated with our spot market voyages when the charterer exceeds the agreed upon time required to load or discharge a cargo.

2. Time Charter Equivalent Rate

The time charter equivalent rate ("TCE Rate") is a standard industry measure of the average daily revenue performance of a vessel. TCE Rate is equal to Voyage Revenue, less voyage expenses during a period, divided by the number of available days during the period. TCE Rate is used primarily to compare daily earnings generated by vessels on time charters with earnings generated by vessels on spot charters, because charter rates for vessels on spot charters are generally not expressed in per day amounts, and

charter rates for vessels on time charters generally are expressed in such amounts. Time charter equivalent revenue and TCE Rate are not measures of financial performance under GAAP and may not be comparable to similarly titled measures of other companies.

3. Spot Charter

A spot charter is an agreement to charter a vessel for an agreed amount of cargo from specified loading port(s) to specified discharge port(s). In contrast to a time charter, the vessel owner is generally required to pay substantially all of the voyage expenses, including port costs, canal charges and fuel expenses, in addition to the vessel operating expenses.

4. Time Charter

A time charter is a contract for the use of a vessel for a specific period of time during which the charterer pays substantially all of the voyage expenses, including port costs, canal charges and fuel expenses. The vessel owner pays commissions on gross voyage revenues and the vessel operating expenses, which include crew wages, insurance, technical maintenance costs, spares, stores and supplies. Time charter rates are usually fixed during the term of the charter. Fluctuations in time charter rates are influenced by changes in spot charter rates. Prevailing time charter rates do fluctuate on a seasonal and year-to-year basis and may be substantially higher or lower from a prior time charter agreement when the subject vessel owner is seeking to renew the time charter agreement with the existing charterer or enter into a new time charter agreement with another charterer.

Drivers of time charter rates include, among others:

- General economic and market conditions affecting the shipping industry;
- Supply/demand balance for tankers and the types and sizes of comparable tankers;
- Demand for petroleum products;
- Vessel acquisitions and disposals;
- Cost of new buildings and the ability of shipyards and shipowners to finance the cost of construction of newbuilds;
- Governmental and other regulations; and
- Regulation of the tanker industry.

5. Vessel Operating Expenses

These expenses generally represent direct expenses incurred for costs associated with the operation of the vessels and activities related to the delivery of products and services to customers. Vessel operating expenses generally represent fixed costs. Vessel operating expenses mainly consist of the following:

- Crew Expenses;
- Victualling;
- Deck and Engine Stores;

- Insurance;
- Lubricants;
- Maintenance Repairs; and
- Spare Parts.

6. Depreciation

The cost of the Debtors' vessels is depreciated on a straight-line basis over the expected useful life of each vessel. Depreciation is based on the cost of the vessel less its estimated residual value. Batuta depreciated the Debtors' product tankers over 25 years.

7. General and Administrative Expenses

General and administrative expenses are composed of general corporate overhead expenses, including personnel costs, property costs, legal and professional fees, and other general administrative expenses. Personnel costs include, among other things, salaries, pension costs, fringe benefits, travel costs and health insurance.

These costs also include post-Assumed Effective Date general corporate costs and costs related to the final administration and closing of the Chapter 11 Cases in accordance with the Plan.

8. Post-Assumed Effective Date Debt Structure

Solely for the purpose of the analysis set forth herein, Batuta has assumed that the debt structure of Reorganized Holdings will consist of one or more secured credit facilities (collectively, the "Secured Debt") collateralized by the 4 MR class product tankers. The assumed interest rate on the credit facility(ies) is assumed to be 7.5% per year.

SME Consolidated Projections ($mm USD)	6 mths 2024	2025	2026	2027	2028	2029
Voyage Revenue	$19.5	$38.9	$32.9	$31.2	$31.6	$32.1
YoY Growth			*-15.4%*	*-5.3%*	*1.5%*	*1.5%*
Vessel Operating Expenses (including management fees)	$6.2	$12.8	$13.1	$13.3	$13.6	$13.9
YoY Growth			*2.0%*	*2.0%*	*2.0%*	*2.0%*
General & Administrative	$2.2	$4.4	$4.5	$4.6	$4.7	$4.8
YoY Growth			*2.0%*	*2.0%*	*2.0%*	*2.0%*
Ongoing Expenses from Chapter 11 proceedings	$1.5	$1.2	$0.0	$0.0	$0.0	$0.0
EBITDA	$9.6	$20.5	$15.4	$13.3	$13.4	$13.5
YoY Growth			*-25.1%*	*-13.6%*	*0.8%*	*0.8%*
Check						
Depreciation	$3.8	$7.7	$6.5	$6.5	$6.5	$6.5
Cash Interet/Amortization	$4.0	$3.9	$3.6	$3.6	$3.6	$3.6
Net Profit/Loss	$1.8	$8.9	$5.3	$3.2	$3.3	$3.4
EBITDA	$9.6	$20.5	$15.4	$13.3	$13.4	$13.5
Cash Interest/Financing Costs	($4.0)	($3.9)	($3.6)	($3.6)	($3.6)	($3.6)
Capex	($1.7)	($3.4)	($3.4)	($3.4)	($3.4)	($3.4)
FCF	$3.9	$13.2	$8.3	$6.2	$6.3	$6.4
Debt	$48.1	$48.1	$48.1	$48.1	$48.1	$48.1
Cash	$8.9	$22.1	$30.4	$36.7	$43.0	$49.5
Net Debt	$39.2	$26.0	$17.7	$11.4	$5.1	($1.4)
Debt/EBITDA	5.0x	2.3x	3.1x	3.6x	3.6x	3.6x
Net Debt/EBITDA	10.x	2.0x	2.1x	1.8x	.8x	-.2x

APPENDIX E

Valuation Analysis

VALUATION ANALYSIS

THE VALUATION INFORMATION CONTAINED HEREIN IS NOT A PREDICTION OR GUARANTEE OF THE ACTUAL MARKET VALUE THAT MAY BE REALIZED THROUGH THE SALE OF ANY SECURITIES TO BE ISSUED PURSUANT TO THE PLAN. THE VALUATION ANALYSIS IS PRESENTED SOLELY FOR THE PURPOSE OF PROVIDING ADEQUATE INFORMATION AS REQUIRED BY SECTION 1125 OF THE BANKRUPTCY CODE TO ENABLE THE HOLDERS OF CLAIMS OR INTERESTS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN TO MAKE AN INFORMED JUDGMENT ABOUT THE PLAN AND SHOULD NOT BE USED OR RELIED UPON FOR ANY OTHER PURPOSE, INCLUDING THE PURCHASE OR SALE OF CLAIMS AGAINST OR INTERESTS IN THE DEBTORS. **THE PLAN PROPONENTS[1] RESERVE THE RIGHT TO SUPPLEMENT OR MODIFY THE VALUATION ANALYSIS, INCLUDING BY CHANGING THE ASSUMPTIONS OR ANALYSIS SET FORTH HEREIN.**

Batuta Captial Advisors LLC ("Batuta"), at the direction of the Plan Proponents, performed a valuation analysis of Reorganized Holdings (the "Valuation Analysis").

Based upon and subject to the review and analysis described herein, and subject to the assumptions, limitations and qualifications described herein, Batuta's view, as of May 8, 2024, was that the estimated going concern enterprise value of Reorganized Holdings, as of an assumed Effective Date for purposes of the Valuation Analysis of July 31, 2024 (the "Assumed Effective Date"), would be in a range of between $103.9 million and $116.4 million. The midpoint of the enterprise valuation range is $110.2 million. Based upon our range of estimated going concern enterprise value of Reorganized Holdings of between $103.9 million and $116.4 million, assumed leases of $48.1 million (assuming net leases for the use of certain vessels owned by entities affiliated or associated with Oaktree Capital Management as of July 31, 2024), the Rights Offering in the amount of up to $43.5 million, and cash distributions to Holders of Administrative Claims, Priority Tax Claims, Other Priority Claims, Secured Claims, OCM Guaranty Claims, Subordinated Claims, Intercompany Claims, and Convenience Claims and General Unsecured Claims opting for a cash-out option of between $28.7 million and $37.2 million, the ascribed estimate of the range of equity value for Reorganized Holdings as of the Assumed Effective Date, is between approximately $55.8 million and $68.3 million, with a midpoint estimate of $62.1 million.

Batuta's views are based on economic, monetary, market, and other conditions in effect, and the information available to Batuta as of the date of the Valuation Analysis. It should be understood that, although subsequent developments may affect Batuta's views, Batuta does not have any obligation to update, revise, or reaffirm its estimate.

The Valuation Analysis is based on a number of assumptions, including, among other assumptions, that (i) the Debtors will be reorganized in accordance with the Plan Proponent's proposed Plan which will be consummated on the Assumed Effective Date,

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[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan or in the Disclosure Statement, to which the Valuation Analysis is attached as an appendix.

(ii) Reorganized Holdings will achieve the results set forth in in the accompanying Financial Projections prepared by Batuta (as per the Disclosure Statement and the Appendices thereto) for 2024 through 2029 (the "Projection Period") prepared by Batuta based on information available from the Debtors and publicly available sources, (iii) Reorganized Holdings' capitalization and available cash will be as set forth in the Plan and this Disclosure Statement, and (iv) Reorganized Holdings will be able to obtain all future financings, on the terms and at the times, necessary to achieve the results set forth in the Financial Projections. Batuta makes no representation as to the achievability or reasonableness of such assumptions. In addition, Batuta assumed that there will be no material change in economic, monetary, market, and other conditions as in effect on, and the information made available to Batuta, as of the Assumed Effective Date. Batuta assumed that the Financial Projections it prepared based on the limited data available from the Debtors and publicly available are reasonable on the basis that it currently reflects the best available estimates and judgments as to the future financial and operating performance of Reorganized Holdings. The future results of Reorganized Holdings are dependent upon various factors, many of which are beyond the control or knowledge of the Plan Proponents and their advisors, including Batuta, and consequently are inherently difficult to project. Reorganized Holdings' actual future results may differ materially (positively or negatively) from the Financial Projections and, as a result, the actual enterprise value of Reorganized Holdings may be materially higher or lower than the estimated range herein. Among other things, failure to consummate the Plan in a timely manner, including any delay in the Assumed Effective Date, may have a materially negative impact on the enterprise value of Reorganized Holdings.

The estimated enterprise value in the Valuation Analysis represents a hypothetical enterprise value of Reorganized Holdings as the continuing operators of the business and assets of the Debtors, after giving effect to the Plan, based on consideration of certain valuation methodologies as described below. The estimated enterprise value in this section does not purport to constitute an appraisal or necessarily reflect the actual market value that might be realized through a sale or liquidation of Reorganized Holdings, its securities or its assets, which may be materially higher or lower than the estimated enterprise value range herein.

The actual value of an operating business such as Reorganized Holdings' business is subject to uncertainties and contingencies that are difficult to predict and will fluctuate with changes in various factors affecting the financial condition and prospects of such a business. In conducting its analysis, Batuta, among other things: (i) reviewed certain publicly available business and financial information relating to Reorganized Holdings that Batuta deemed relevant; (ii) reviewed certain information relating to the business, earnings, cash flow, assets, liabilities, and prospects of Reorganized Holdings which are mostly dated, including the Financial Projections prepared by Batuta based on historical data and market information; (iii) reviewed publicly available financial and stock market data for certain selected publicly traded companies; (iv) reviewed publicly available financial data for certain selected precedent vessel transactions that Batuta deemed relevant; (v) reviewed a draft of the Amended Plan dated April 8, 2024 filed by the Debtors [Docket No. 570]; and (vi) conducted such other financial studies and analyses and took into account such other information as Batuta deemed appropriate. In connection with its review, Batuta did not assume any responsibility for independent

verification of any of the information supplied to, discussed with, or reviewed by Batuta and relied on such information being complete and accurate in all material respects. Batuta did not make any independent evaluation or appraisal of any of the assets or liabilities (contingent, derivative, off-balance- sheet, tax-related or otherwise) of Reorganized Holdings, nor was Batuta furnished with any such evaluation or appraisal.

THE ESTIMATED ENTERPRISE VALUE IN THE VALUATION ANALYSIS DOES NOT CONSTITUTE A RECOMMENDATION TO ANY HOLDER OF A CLAIM OR INTEREST AS TO HOW SUCH HOLDER OF A CLAIM OR INTEREST SHOULD VOTE OR OTHERWISE ACT WITH RESPECT TO THE PLAN. BATUTA HAS NOT BEEN ASKED TO AND DOES NOT EXPRESS ANY VIEW AS TO WHAT THE TRADING VALUE OF REORGANIZED HOLDINGS' SECURITIES WOULD BE WHEN ISSUED PURSUANT TO THE PLAN OR THE PRICES AT WHICH THEY MAY TRADE IN THE FUTURE. THE ESTIMATED ENTERPRISE VALUE SET FORTH HEREIN DOES NOT CONSTITUTE AN OPINION AS TO FAIRNESS FROM A FINANCIAL POINT OF VIEW TO ANY HOLDER OF A CLAIM OR INTEREST OF THE CONSIDERATION TO BE RECEIVED BY SUCH HOLDER OF A CLAIM OR INTEREST UNDER THE PLAN OR OF THE TERMS AND PROVISIONS OF THE PLAN. THE VALUATION ANALYSIS DOES NOT SHOW EXPENSES RELATED TO THE INVESTIGATION, COMMENCEMENT, OR PURSUIT OF POTENTIAL CLAIMS AND CAUSES OF ACTION OR ANY INCOME DERIVED THEREFROM ON ACCOUNT OF ANY PROCEEDS THEREOF (IF ANY).

I. Valuation Methodologies

In preparing the Valuation Analysis, Batuta performed a variety of financial analyses and considered a variety of factors. The following is a brief summary of the material financial analyses performed by Batuta, which consisted of (a) a selected publicly traded companies analysis, (b) a net asset value (NAV) analysis and (c) discounted cash flow analysis. This summary does not purport to be a complete description of the analyses performed and factors considered by Batuta. The preparation of a valuation analysis is a complex analytical process involving various judgmental determinations as to the most appropriate and relevant methods of financial analysis and the application of those methods to particular facts and circumstances, and such analyses and judgments are not readily susceptible to summary description. As such, the Valuation Analysis must be considered as a whole. Reliance on only one of the methodologies used, or portions of the analysis performed, could create a misleading or incomplete conclusion as to enterprise value.

A. Selected Publicly Traded Companies Analysis

The selected publicly traded companies analysis is based on the enterprise values of selected publicly traded shipping companies that have operating and financial characteristics comparable in certain respects to Reorganized Holdings. For example, such characteristics may include similar size and scale of operations, end-market exposure, product mix, operating margins, growth rates, and geographical exposure.

Under this methodology, certain financial multiples that measure financial performance and value are calculated for each selected company and then applied to Reorganized Holdings' financials to imply an enterprise value for Reorganized Holdings. Batuta used, among other measures, enterprise value (defined as market value of equity, plus book value of debt and book value of preferred stock and minority interests, less cash, subject to adjustments for underfunded pension and retirement obligations and other items where appropriate) for each selected company as a multiple of such company's publicly available consensus projected EV/EBITDA multiple for fiscal year 2025. Although the selected companies were used for comparison purposes, no selected publicly traded company is either identical or directly comparable to the business of Reorganized Holdings. Accordingly, Batuta's comparison of selected publicly traded companies to the business of Reorganized Holdings and analysis of the results of such comparisons was not purely mathematical, but instead involved considerations and judgments concerning differences in operating and financial characteristics and other factors that could affect the relative values of the selected publicly traded companies and Reorganized Holdings. The selection of appropriate companies for this analysis is a matter of judgment and subject to limitations due to sample size and the public availability of meaningful market-based information. Batuta also took into account a private discount to the public comparable values as per Damodaran[2] to take into account the private nature of the Debtors' business.

B. Net Asset Value (NAV) Analysis

The selected transactions analysis is based on the implied enterprise value of companies and assets involved in publicly disclosed and Vessels Value asset valuations (an independent, third party research widely used in the industry) for which the targets had operating and financial characteristics comparable in certain respects to Reorganized Holdings. Under this methodology, the asset value of each such target is determined by an analysis of the consideration paid net of debt encumbering the asset. Other factors not directly related to a company's business operations can affect a valuation in a transaction, including, among others factors, the following: (a) circumstances surrounding the specific age and condition of the vessel may introduce "diffusive quantitative results" into the analysis (*e.g.*, a buyer may pay an additional premium for reasons that are not solely related to competitive bidding); (b) the market environment is not identical for transactions occurring at different periods of time; (c) circumstances pertaining to the financial position of the company may have an impact on the resulting purchase price (*e.g.*, a company in financial distress may receive a lower price due to perceived weakness in its bargaining leverage); and (d) the ongoing tax environment at the time of the transaction.

C. Discounted Cash Flow Analysis

The discounted cash flow ("DCF") analysis is a valuation methodology that estimates the value of an asset or business by calculating the present value of expected future cash flows to be generated by that asset or business plus a present value of the estimated terminal value of that asset or business. The DCF analysis used the Financial Projections' estimated free cash flows through December 31, 2040. These cash flows

[2] Valuation, Damodaran, Aswath, 2016.

were then discounted at a range of estimated cost of equity ("Discount Rate") for Reorganized Holdings. Rate reflects the estimated rate of return that would be expected by equity investors to invest in Reorganized Holdings' business. The value was determined by estimating the weighted average cost of capital for such debt instruments and common equity as appropriate for Reorganized Holdings' capitalization. Batuta estimated the duration of cash flows by the average useful life of comparable assets. To determine the total enterprise value, assumed secured vessel debt was added to the derived equity value, and the estimated cash balance as of the Assumed Effective Date was added to the derived equity value.

To determine the Discount Rate, Batuta estimated the cost of equity for Reorganized Holdings based on (I) the capital asset pricing model, which assumes that the expected equity return is a function of the risk-free rate, equity market premium, and the correlation of the stock performance of the selected publicly traded companies to the return on the broader market and (II) an adjustment related to Reorganized Holdings' status as a private company.

II. Reorganized Holdings—Valuation Considerations

The estimated value in the Valuation Analysis is not necessarily indicative of actual value, which may be significantly higher or lower than the ranges set forth herein. Accordingly, neither Batuta nor any other person assumes responsibility for the accuracy of such estimated value. Depending on the actual financial results of the Debtors or changes in the economy and the financial markets, the value of Reorganized Holdings as of the Assumed Effective Date may differ from the estimated value set forth herein as of the Assumed Effective Date. In addition, the market prices, to the extent there is a market, of Reorganized Holdings' securities will depend upon, among other things, prevailing interest rates, conditions in the economy and the financial markets, the investment decisions of prepetition creditors receiving such securities under the Plan (some of whom may prefer to liquidate their investment rather than hold it on a long-term basis), and other factors that generally influence the prices of securities.

As noted in the Disclosure Statement included herewith, the Debtors and their non-Debtor subsidiaries will retain various claims and causes of action, including relating to Eletson Gas LLC, Levona Holdings, Ltd., and others. Given the costs and risks associated with such claims and causes of action, this Valuation Analysis does not provide an estimate of (i) the fees and expenses needed to bring those claims and causes of action, including, among others, issues associated with collectability and enforcement of any judgments, and (ii) the gross recovery resulting from those claims and causes of action (if any).

APPENDIX F

Initial Backstop Party Financial Wherewithal

Mulberry Street Ltd

June 14, 2024

Eletson Holdings Inc.
c/o Eletson Maritime, Inc.
1 Landmark Square, Suite 424
Stamford, Connecticut 06901

The Official Committee of Unsecured Creditors
c/o Stephen Zide
Dechert LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036

Re: **Commitment Letter**

Ladies and Gentlemen:

Reference is made to the (i) *Petitioning Creditors' Amended Joint Chapter 11 Plan of Reorganization of Eletson Holdings Inc. and its Affiliated Debtor*s filed on June 6, 2024 at Docket Number 740, Exhibit 1 (as amended or modified from time to time, the "PC Plan")[1] and (ii) *Petitioning Creditors' Overbid Chapter 11 Plan for Eletson Holdings Inc. and its Affiliated Debtor*s filed on June 11, 2024 at Docket Number 762, Exhibit 1 (as amended or modified from time to time, the "PC Overbid Plan"), each by the Petitioning Creditors,[2] as plan proponents, to reorganize the claims against and interests in Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC (collectively, the "Debtors"), as debtors and debtors-in-possession in their chapter 11 cases currently pending in the United Stated Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") and jointly administered under Case No. 23-10322 (JPM) (the "Chapter 11 Cases").

The PC Plan contemplates an offering of rights, up to $43.5 million (the "Backstop Amount"), to purchase up to 75% of the new common stock of reorganized Eletson Holdings Inc. ("Reorganized Holdings") (subject to dilution on account of the Backstop Premium and the EIP) in connection with the consummation of the PC Plan (the "Rights Offering"). The PC Overbid Plan contemplates an equity investment contribution, in the amount of $33 million (the "Equity Investment"), in connection with the consummation of the PC Overbid Plan.

This letter (the "Commitment Letter") is hereby issued by Mulberry Street Ltd. (in such capacity, the "Backstop Party"), an affiliate of Pach Shemen LLC ("Pach Shemen"), to backstop, on a fully committed basis, up to $43.5 million (the "Commitment Amount") in cash, either in connection with (i) the Rights Offering, up to the Rights Offering Amount, on the terms and conditions set forth in the PC Plan, the Rights Offering Procedures, Rights Offering Procedures Order, and the Backstop Agreement (each, as defined in the PC Plan) or (ii) the Equity Investment on the terms and conditions set forth in the PC Overbid Plan.

[1] Capitalized terms used herein but undefined have the meaning provided in the PC Plan.
[2] For the purposes of this Commitment Letter, "Petitioning Creditors" consist of Pach Shemen LLC, VR Global Partners, L.P., Alpine Partners (BVI), L.P., Mark Millet, In His Capacity as Trustee of the Mark E. Millet Living Trust, Mark Millet, In His Capacity as Trustee of the Millet 2016 Irrevocable Trust, Robert Latter, Tracy Lee Gustafson, Jason Chamness, and Ron Pike.

The Backstop Party hereby irrevocably commits to provide Reorganized Holdings up to the Commitment Amount for the purposes of effecting either (but not both) the Rights Offering or the Equity Investment, as applicable, in connection with consummation of the PC Plan or PC Overbid Plan, as applicable, following confirmation thereof by the Bankruptcy Court.

Pursuant to this Commitment Letter, the Backstop Party hereby agrees to, and will, pay up to the Commitment Amount in cash to Reorganized Holdings upon the Effective Date of the PC Plan or PC Overbid Plan, as applicable, in accordance with the terms thereof solely for purposes of consummating the PC Plan or PC Overbid Plan, as applicable. Upon receipt by Reorganized Holdings of the Rights Offering Amount or Equity Investment, as applicable, and the consummation of the PC Plan or PC Overbid Plan, as applicable, the Backstop Party understands that Pach Shemen (or one or more affiliate(s) or designee(s) of Pach Shemen) will receive the Interests in Reorganized Holdings, pursuant to the terms and conditions provided for in the PC Plan or PC Overbid Plan, as applicable.

In the event a Confirmation Order with respect to the PC Plan and/or the PC Overbid Plan is not entered or does not become a Final Order, or in the event the Effective Date of the PC Plan and/or the PC Overbid Plan does not occur for any reason other than due to any action or inaction by the Backstop Party, the Backstop Party's obligations hereunder shall immediately terminate without further notice or action by any party. In addition, the Backstop Party's obligations hereunder shall terminate, without further notice or action by any party, on (i) August 15, 2024, if the Bankruptcy Court has not entered a Confirmation Order, in form and substance satisfactory to the Backstop Party, confirming the PC Plan or PC Overbid Plan, as applicable, on or prior to August 15, 20204, or (ii)(a) October 31, 2024, if the Bankruptcy Court has entered a Confirmation Order confirming the PC Plan, but it has not been consummated or the Rights Offering has not closed on or prior to October 31, 2024, or (b) September 30, 2024, if the Bankruptcy Court has entered a Confirmation Order confirming the PC Overbid Plan, but it has not been consummated on or prior to September 30, 2024.

The Backstop Party hereby represents and warrants that:

a. it has uncalled capital commitments, committed financing lines, or otherwise has available funds to fund its obligations under this Commitment Letter and such available funds are not subject to claw back;
b. it is duly organized, validly existing and, where applicable, in good standing under the laws of its jurisdiction of organization or establishment;
c. it has the corporate power and authority to execute and deliver this Commitment Letter and to perform its obligations hereunder;
d. this Commitment Letter has been duly authorized by all necessary corporate action on the part of the Backstop Party, and this Commitment Letter constitutes a legal, valid and binding obligation of the Backstop Party enforceable against the Backstop Party in accordance with its terms;
e. no restrictions in contract or law of any kind governing the Backstop Party prohibits, limits, or restricts in any way the execution of this Commitment Letter by the Backstop Party or the performance of the Backstop Party's obligations hereunder;

f. the operations of the Backstop Party and its subsidiaries are and have been at all times since June 14, 2019, conducted in compliance in all material respects with applicable financial recordkeeping and reporting requirements of the U.S. Currency and Foreign Transactions Reporting Act of 1970, the money laundering statutes of all jurisdictions in which the Backstop Party or any of its subsidiaries operate and any related or similar law and no legal proceeding by or before any Governmental Entity or any arbitrator involving the Backstop Party or any of its subsidiaries with respect to such laws is pending or, to the knowledge of the Backstop Party, threatened;
g. Neither the Backstop Party and its subsidiaries nor, to the knowledge of the Backstop party, any of their respective directors, officers, employees or other persons acting on their behalf with express authority to so act are currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department;
h. none of the funds comprising the Commitment Amount has been or will be derived, directly or indirectly, from or relate to illicit, illegal, or improper origin;
i. none of the funds comprising the Commitment Amount are derived from or relate to assets subject to the *Stipulation and Order Granting Alleged Debtor's Motion for Relief from Stay to Proceed With, or, to Confirm the Inapplicability of, the Automatic Stay to Prepetition Arbitration Proceedings* [Docket No. 48]; and
j. it will reasonably cooperate with the Committee (as defined herein) to ensure the representations herein are accurate and reliable.

Further supporting the foregoing representations and warranties, attached hereto as **Exhibit A** is account information showing readily available cash in the amount of $43.5 million.

This Commitment Letter has been and is made solely for the benefit of the Debtors and their estates and solely for purposes of backstopping the Rights Offering under the PC Plan and/or the Equity Investment under the PC Overbid Plan. The Backstop Party acknowledges and agrees that the Debtors and their estates shall have all rights for purposes of seeking specific performance of the Backstop Party's obligations to pay, as applicable, the Rights Offering Amount pursuant to the PC Plan or the Equity Investment pursuant to the PC Overbid Plan. The Backstop Party agrees that the Official Committee of Unsecured Creditors (the "Committee") in the Chapter 11 Cases is a third-party beneficiary to this Commitment Letter and shall have all rights to enforce this Commitment Letter. The Backstop Party agrees not to oppose the granting of any specific performance or other equitable relief on the basis that the Debtors and their estates have an adequate remedy at law or that an award of specific performance is not an appropriate remedy for any reason at law or equity. Nothing in this Commitment Letter, expressed or implied, is intended to confer or does confer on any other person or entity (other than the Committee acting on behalf of the estates) any rights or remedies under or by reason of this Commitment Letter or the agreements contained herein.

This Commitment Letter, the PC Plan (including the Rights Offering Order, Rights Offering Procedures, and Backstop Agreement), and the PC Overbid Plan embody the entire agreement and understanding among the Backstop Party, the Debtors, and the Committee with respect to the Commitment Amount, supersedes all prior agreements and understandings relating to the specific matters hereof, and may not be contradicted

by evidence of prior, contemporaneous, or subsequent oral agreements of the Backstop Party, the Debtors, and the Committee. The commitment and obligations of the Backstop Party are not assignable. This Commitment Letter is not assignable by the Debtors and all rights hereunder are intended to be solely for the benefit of the Debtors and their estates.

The Backstop Party agrees that the Bankruptcy Court shall have exclusive jurisdiction with respect to this Commitment Letter. For the avoidance of doubt, the Backstop Party irrevocably submits to the jurisdiction of the Bankruptcy Court solely for purpose (i) of enforcement of the terms of this Commitment Letter or (ii) to compel the payment of the applicable Commitment Amount by the Backstop Party.

This Commitment Letter shall be governed by, and construed in accordance with, the laws of the State of New York and, to the extent applicable, the Bankruptcy Code.

[*Signature Page Follows*]

MULBERRY STREET LTD

By: BG Management Limited
Name: Jason Jagessar / Engelbert van Aalst
Title: Authorised signatories

Exhibit A

Account Information

Mulberry Street Ltd

Sea Meadow House, 3rd Floor PO Box 116
Road Town, Tortola VG VG1110

Mulberry Street Ltd

Monthly Statement

Period: June 1, 2024 - June 12, 2024

Account Name:	Mulberry Street Ltd	Rep/Advisor:	
Correspondent:	CVMS	Margin Type:	Cash
Account No:	CVMS001		
Master Account No:	CVMS001		

Account Summary	This Period	Year to Date
Beginning Account Value	$ --	$ --
Deposit	$47,315,000.00	$69,057,774.99
Withdrawals	-$3,815,000.00	-$25,565,000.00
Income	$7,225.01	$7,225.01
Fees	$ --	$ --
Change In Investment Value	$ --	$ --
Ending Account Value	$43,507,225.01	$43,507,225.01

Position Summary	
Unrealized Gain/(Loss)	$ --
Cash Balance	$43,507,225.01
Long Market Value	$ --
Short Market Value	$ --
Equity	$43,507,225.01

Realized Gain/Loss from Sales	This Period	Year to Date
Short Term		
Gain	$ --	$ --
Loss	$ --	$ --
Net Short Term	$ --	$ --
Long Term		
Gain	$ --	$ --
Loss	$ --	$ --
Net Long Term	$ --	$ --
Other		
Dividend	$ --	$ --
Interest	$7,225.01	$7,225.01
Miscellaneous	$ --	$ --

Holdings

Symbol	Symbol Description	Quantity	Market Price	Market Value	Cost Price	Cost Basis	Unrealized
No holdings found.							

Trade Activity

Trade Date	Settle Date	Side	Symbol	Description	Quantity	Price	Fees	Net Amount	Status
No record found.									

Cash Activity

Trade Date	Settle Date	Entry Type	Description	Net Amount	Status
06/03/2024	06/03/2024	CSW	Transfer request as per email	$3,815,000.00	Executed
06/04/2024	06/04/2024	JNLC	Journal Funds - Same Beneficial Owner	-$2,289,000.00	Executed
06/04/2024	06/04/2024	JNLC	Journal Funds - Same Beneficial Owner	-$1,526,000.00	Executed
06/11/2024	06/11/2024	CSW	Transfer request as per email from Elliot on 6/11/2024	$6,500,000.00	Executed
06/11/2024	06/11/2024	CSW	Transfer request as per email from Elliot on 6/11/2024	$16,000,000.00	Executed
06/12/2024	06/12/2024	CSW	transfer request as per email from Elliot	$6,000,000.00	Executed
06/12/2024	06/12/2024	CSW	transfer request as per email from Elliot	$15,000,000.00	Executed

Other Entries

Trade Date	Settle Date	Entry Type	Symbol	Description	Quantity	Price	Fees	Net Amount	Status
06/05/2024	06/05/2024	INT		Margin Int: May 2024 Group by: Correspondent - CVMS001	0	$ --	$ --	$7,225.01	Executed

Terms & Conditions

You may have received a confirmation for a trade, which does not appear on this statement. If the settlement date of the trade as shown on the confirmation is later than the period ending date that appears at the top of this statement, the trade will appear on your next regular monthly statement.

If this is a margin account and we maintain a special miscellaneous account for you, this is a combined statement of your general account and special miscellaneous account maintained for you under Regulation T issued by the Board of Governors of the Federal Reserve System. The permanent record of the special miscellaneous account as required by Regulation T is available for your inspection at your request.

The per annum rate of interest charged on the debit balance in your account is shown on this statement. This rate may change from time to time in accordance with fluctuations in interest rates. The interest is based on the average daily net debit balance in your account with us and for the actual number of days based on an interest year of 360 days.

We are required to report to the Internal Revenue Service all cash dividends and registered bond interest credited to your account on securities held for you in

our name. We also report coupon bond interest. All dividends and interest credits should be included in your income tax return.

You are to promptly advise your brokerage firm or bank of any material changes concerning your investment objectives or financial situation. Our financial statement is available for your personal inspection on our website at www.curvaturesecurities.com/clearing or a copy will be mailed upon your written request.

SIPC Protection. As a member of the Securities Investor Protection Corporation (SIPC). funds are available to meet customer claims up to a ceiling of $500,000. including a maximum of $250,000 for cash claims. For additional information regarding SIPC coverage. including a brochure. please contact SIPC at (202) 371-8300 or www.sipc.org.

Any free credit balance represents funds payable upon demand, although properly accounted for on our books of records, is not segregated and maybe used in the conduct of this firm's business as permissible under the SEC Rule 15c3-2.

Curvature Securities, LLC (“Curvature”) acts as a clearing agent for your trades.

As required under SEC rules, both the Firm's Order Routing Report as well as information regarding specific order routing information are available free of charge upon request.

In addition to the above-mentioned services. **Curvature** will provide cashiering services, safeguarding of funds and securities while in **Curvature** possession, monitoring compliance with applicable credit Regulation T and **Curvature** internal policies, preparing and mailing your account records (including transaction confirmations and periodic statements of your account).

Interest charges to your account will be based on the size and net debit balance during the interest period. These rates are subject to revision without notice. For more complete information regarding Interest charged to customers, consult the Truth in Lending Notice which is made available on **Curvature** website at www.curvaturesecurities.com.

Curvature is a member of the Financial Industry Regulatory Authority, Inc. ("FINRA") and we are required to inform you of the availability of the FINRA Investor Brochure, which contains information on FINRA Broker Check. You may contact FINRA at 800-289-9999 or through their website at www.finra.org.

Curvature carries your account and acts as your custodian for funds and securities deposited with us directly by you, through your brokerage firm or bank or as a result of transactions we process for your account. Any suspected inaccuracy or discrepancy in your account statement must be promptly reported to both your brokerage firm or bank (not to your individual broker or agent) and Curvature. In order to protect your rights, including your right to SIPC coverage, please confirm any oral communication in writing and include your brokerage account number. General inquiries or concerns regarding your account should be directed to your brokerage firm or bank. Account positions and balance inquiries or concerns should be directed to Curvature Securities via email at www.curvaturesecurities.com .

The SEC requires all broker-dealers that route orders in equity securities and options to make available quarterly reports that present a general overview of their routing practices. These ports must identify the executing venues to which customer orders were routed for execution during the applicable quarter and disclose the material aspects of the broker-dealer's relationship with such venues. In addition. the Rule (SEC 606) [www.INTRODUCINGBROKER.com/Rule606] requires broker-dealers to disclose, on customer request, the venues to which the individual customer's orders were routed for the six months prior to the request, and the execution time for the orders that were executed. For further information. please contact your broker.

PLEASE RETAIN THIS STATEMENT AS IT WILL BE HELPFUL IN PREPARING YOUR INCOME TAX RETURNS AND MAY BE NEEDED ALONG WITH SUBSEQUENT STATEMENTS TO VERIFY INTEREST CHARGES IN YOUR ACCOUNT. THIS STATEMENT SHALL BE DEEMED CONCLUSIVE UNLESS OBJECTED TO IN WRITING WITHIN

10 BUSINESS DAYS OF THE STATEMENT CLOSING DATE. MUTUAL FUNDS AND OTHER SECURITIES ARE NOT INSURED BY THE FDIC, ARE NOT DEPOSITS OR OBLIGATIONS OF, OR GUARANTEED BY CURVATURE, AND INVOLVE INVESTMENT RISKS, INCLUDING THE POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED.

Exhibit 2

Solicitation Amended Disclosure Statement
(Redline)

ACCEPTANCES OR REJECTIONS WITH RESPECT TO THE PLAN ARE BEING SOLICITED PURSUANT TO THIS ~~PROPOSED~~ DISCLOSURE STATEMENT, WHICH HAS ~~NOT~~ BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION WITHIN THE MEANING OF SECTION 1125(a) OF THE BANKRUPTCY CODE. THE PETITIONING CREDITORS RESERVE THE RIGHT TO AMEND OR SUPPLEMENT THIS ~~PROPOSED~~ DISCLOSURE STATEMENT. THIS DISCLOSURE STATEMENT IS A SOLICITATION VERSION AND INTENDED SOLELY FOR THE SOLICITATION OF VOTES ON THE PLAN.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

AMENDED DISCLOSURE STATEMENT
IN SUPPORT OF PETITIONING CREDITORS'

AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION
OF ELETSON HOLDINGS INC. AND ITS AFFILIATED DEBTORS

TOGUT, SEGAL & SEGAL LLP
One Penn Plaza
New York, New York 10119
(212) 594-5000
Kyle J. Ortiz
Bryan M. Kotliar
Martha E. Martir
Amanda C. Glaubach

Counsel for the Petitioning Creditors[2]

Deleted Cells

[1] The Debtors in these cases are: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC. The address of the Debtors' corporate headquarters is 118 Kolokotroni Street, GR 185 35 Piraeus, Greece. The Debtors' mailing address is c/o Eletson Maritime, Inc., 1 Landmark Square, Suite 424, Stamford, Connecticut 06901.

[2] The "Petitioning Creditors" are Pach Shemen LLC, VR Global Partners, L.P., Alpine Partners (BVI), L.P., Gene B. Goldstein ("Goldstein") and Gene B. Goldstein, In His Capacity as Trustee of the Gene B. Goldstein and Francine T. Goldstein Family Trust ("Goldstein Trust", and together with Goldstein, "Mr. Goldstein"), Mark Millet, In His Capacity as Trustee of the Mark E. Millet Living Trust, Mark Millet, In His Capacity as Trustee of the Millet 2016 Irrevocable Trust, Robert Latter, Tracy Lee Gustafson, Jason Chamness, and Ron Pike. While Togut, Segal & Segal LLP represents Mr. Goldstein as a "Petitioning Creditor," Mr. Goldstein is not a "Plan Proponent" for purposes of the Plan.

Dated: July 8June 17, 2024
New York, New York

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THE PLAN PROPONENTS ARE PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT TO HOLDERS OF CLAIMS IN THE VOTING CLASSES FOR PURPOSES OF SOLICITING VOTES TO ACCEPT OR REJECT THE PETITIONING CREDITORS' JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ELETSON HOLDINGS INC. AND ITS AFFILIATED DEBTORS. NOTHING IN THIS DISCLOSURE STATEMENT MAY BE RELIED UPON OR USED BY ANY ENTITY FOR ANY OTHER PURPOSE. BEFORE DECIDING WHETHER TO VOTE FOR OR AGAINST THE PLAN (AS DEFINED HEREIN), EACH HOLDER ENTITLED TO VOTE SHOULD CAREFULLY CONSIDER ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN ARTICLE VIII HEREIN.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT (INCLUDING EXHIBITS) AND THE PLAN IN THEIR ENTIRETY AND ARE ADVISED TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX, OR BUSINESS ADVICE IN REVIEWING THIS DISCLOSURE STATEMENT, THE PLAN, AND THE TRANSACTIONS CONTEMPLATED THEREBY. FURTHER, THE BANKRUPTCY COURT'S APPROVAL OF THE ADEQUACY OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE PLAN.

FACTUAL INFORMATION CONTAINED IN THIS SPECIFIC DISCLOSURE STATEMENT IS SOURCED FROM PUBLIC FILINGS MADE IN THE CHAPTER 11 CASES (AND ELSEWHERE), EXCEPT WHERE OTHERWISE NOTED. IN PARTICULAR, SOME INFORMATION IN THIS DISCLOSURE STATEMENT WAS OBTAINED FROM THE DEBTORS' PLEADINGS, SUCH AS THE DEBTORS' DISCLOSURE STATEMENT, SCHEDULES OF ASSETS AND LIABILITIES AND STATEMENTS OF FINANCIAL AFFAIRS, AND MONTHLY OPERATING REPORTS AND MAY NOT BE RELIED UPON AS ACCURATE. THE PLAN PROPONENTS MAKE NO REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY OF THE INFORMATION, INCLUDING FINANCIAL INFORMATION, CONTAINED HEREIN OR ATTACHED HERETO. THE PLAN PROPONENTS EXPRESSLY CAUTION READERS NOT TO PLACE UNDUE RELIANCE ON ANY FINANCIAL OR FORWARD-LOOKING STATEMENTS CONTAINED HEREIN.

NO INDEPENDENT AUDITOR OR INDEPENDENT ACCOUNTANT HAS REVIEWED OR APPROVED THE LIQUIDATION ANALYSIS OR FINANCIAL INFORMATION PROVIDED OR REFERENCED HEREIN. THE PLAN PROPONENTS HAVE NOT AUTHORIZED ANY PERSON TO GIVE ANY INFORMATION OR ADVICE, OR TO MAKE ANY REPRESENTATION, IN CONNECTION WITH THE PLAN OR THIS DISCLOSURE STATEMENT.

PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT WITH RESPECT TO THE PLAN ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, THE EXHIBITS ATTACHED TO THE PLAN, AND ANY PLAN SUPPLEMENT(S). IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT

AND THE TERMS AND PROVISIONS OF THE PLAN OR THE OTHER DOCUMENTS AND FINANCIAL INFORMATION INCORPORATED IN THIS DISCLOSURE STATEMENT BY REFERENCE, THE PLAN OR THE OTHER DOCUMENTS AND FINANCIAL INFORMATION, AS THE CASE MAY BE, SHALL GOVERN FOR ALL PURPOSES.

THE STATEMENTS AND FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAVE BEEN MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFICALLY NOTED, AND THERE IS NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER SUCH DATE. HOLDERS OF CLAIMS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT ASSUME AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH IN THIS DISCLOSURE STATEMENT SINCE THE DATE OF THIS DISCLOSURE STATEMENT. THE PLAN PROPONENTS RESERVE THE RIGHT TO FILE AN AMENDED OR MODIFIED PLAN AND RELATED DISCLOSURE STATEMENT FROM TIME TO TIME, SUBJECT TO THE TERMS OF THE PLAN.

THIS DISCLOSURE STATEMENT WILL NOT CONSTITUTE NOR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION, OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT WILL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING, NOR WILL IT BE CONSTRUED ~~AS~~ TO CONSTITUTE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE PLAN AS IT RELATES TO HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTORS.

CERTAIN OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, BY THEIR NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. SUCH STATEMENTS CONSIST OF ANY STATEMENT OTHER THAN A RECITATION OF HISTORICAL FACT AND CAN BE IDENTIFIED BY THE USE OF FORWARD-LOOKING TERMINOLOGY SUCH AS "MAY," "EXPECT," "ANTICIPATE," "ESTIMATE," OR "CONTINUE," OR THE NEGATIVE THEREOF, OTHER VARIATIONS THEREON, OR COMPARABLE TERMINOLOGY AND INCLUDE THE LIQUIDATION ANALYSIS, FINANCIAL PROJECTIONS, AND VALUATION OF REORGANIZED HOLDINGS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES. FORWARD-LOOKING STATEMENTS ARE PROVIDED IN THIS DISCLOSURE STATEMENT PURSUANT TO THE SAFE HARBOR ESTABLISHED UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995 AND SHOULD BE EVALUATED IN THE CONTEXT OF THE ESTIMATES, ASSUMPTIONS, UNCERTAINTIES, AND RISKS DESCRIBED HEREIN.

FURTHER, THE READER IS CAUTIONED THAT ALL FORWARD-LOOKING STATEMENTS ARE NECESSARILY SPECULATIVE AND THAT THERE ARE CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM THOSE PRESENTED IN SUCH FORWARD-LOOKING STATEMENTS. DUE TO THESE UNCERTAINTIES, READERS CANNOT BE ASSURED THAT ANY FORWARD-LOOKING STATEMENTS WILL PROVE TO BE CORRECT. THE LIQUIDATION ANALYSIS, FINANCIAL PROJECTIONS, AND OTHER INFORMATION CONTAINED HEREIN AND ATTACHED HERETO ARE ESTIMATES ONLY, AND THE VALUE OF THE PROPERTY DISTRIBUTED TO HOLDERS OF ALLOWED CLAIMS OR EQUITY INTERESTS MAY BE AFFECTED BY MANY FACTORS THAT CANNOT BE PREDICTED. THEREFORE, ANY ANALYSES, ESTIMATES, OR RECOVERY PROJECTIONS MAY OR MAY NOT TURN OUT TO BE ACCURATE. THE PLAN PROPONENTS ARE UNDER NO OBLIGATION TO (AND EXPRESSLY DISCLAIM ANY OBLIGATION TO) UPDATE OR ALTER ANY FORWARD-LOOKING STATEMENTS WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS, OR OTHERWISE, EXCEPT AS REQUIRED BY APPLICABLE LAW. ALL HOLDERS OF IMPAIRED CLAIMS SHOULD CAREFULLY READ AND CONSIDER THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY, INCLUDING SECTION V—"RISK FACTORS TO BE CONSIDERED" BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

THE SECURITIES DESCRIBED IN THIS DISCLOSURE STATEMENT TO BE ISSUED PURSUANT TO THE PLAN WILL BE ISSUED WITHOUT REGISTRATION UNDER THE SECURITIES ACT, AS AMENDED, OR ANY SIMILAR FEDERAL, STATE, OR LOCAL LAW, GENERALLY IN RELIANCE ON THE EXEMPTIONS SET FORTH IN SECTION 1145 OF THE BANKRUPTCY CODE AND SECTION 4(A)(2) OF THE SECURITIES ACT OF 1933 (AS AMENDED, THE "SECURITIES ACT") OR REGULATION D OR REGULATION S PROMULGATED THEREUNDER, AS APPLICABLE.

TO THE EXTENT THAT THE PLAN PROPONENTS RELY ON A PRIVATE PLACEMENT EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT FOR THE OFFER AND ISSUANCE OF ANY SECURITIES, THOSE SECURITIES WILL BE SUBJECT TO RESTRICTIONS ON TRANSFER UNDER THE SECURITIES ACT AND MAY ONLY BE RESOLD OR OTHERWISE TRANSFERRED PURSUANT TO (A) AN EFFECTIVE REGISTRATION STATEMENT OR (B) AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION (THE "SEC") OR ANY STATE SECURITIES COMMISSION OR SIMILAR PUBLIC, GOVERNMENTAL, OR REGULATORY AUTHORITY. THIS DISCLOSURE STATEMENT HAS NOT BEEN FILED FOR APPROVAL WITH THE SEC OR ANY STATE AUTHORITY AND NEITHER THE SEC NOR ANY STATE AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE IN THE

UNITED STATES.

NEITHER THE SOLICITATION NOR THIS DISCLOSURE STATEMENT CONSTITUTES AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY SECURITIES IN ANY STATE OR JURISDICTION IN WHICH SUCH OFFER OR SOLICITATION IS NOT AUTHORIZED.

I. EXECUTIVE SUMMARY

A. Introduction

On March 7, 2023 (the "Petition Date"), Pach Shemen LLC ("Pach Shemen"), VR Global Partners, L.P. ("VR Global"), and Alpine Partners (BVI) L.P (collectively, the "Initial Petitioning Creditors") commenced chapter 7 cases against Eletson Holdings Inc. ("Eletson Holdings"), Eletson Finance (US) LLC ("Eletson Finance") and Agathonissos Finance LLC ("Eletson MI" and, together with Eletson Holdings and Eletson Finance, the "Debtors") by filing involuntary petitions (the "Involuntary Petitions") pursuant to section 303 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court" or the "Court"). The Involuntary Petitions were later joined by, among others, Gene B. Goldstein ("Goldstein") and Gene B. Goldstein in his capacity as Trustee of the Gene B. Goldstein and Francine T. Goldstein Family Trust ("Goldstein Trust", and together with Goldstein, "Mr. Goldstein"), Tracy Gustafson, Jason Chamness, Ron Pike, Mark Millet, in his capacity as Trustee of the Millet 2016 Irrevocable Trust (the "Millet 2016 Trust"), Mark Millet, in his capacity as Trustee of the Mark E. Millet Living Trust (the "Millet Living Trust"), and Robert Latter (collectively, the "Joining Creditors" and, together with the Initial Petitioning Creditors, the "Petitioning Creditors"). The Involuntary Petitions were also joined by NAF and the 2022 Notes Trustee (as defined below). *See* Docket Nos. 92 and 102.

By order of the Bankruptcy Court, on September 25, 2023 (the "Conversion Date"), the Debtors' cases were voluntarily converted, at the Debtors' request, to cases under chapter 11 of the Bankruptcy Code (these "Chapter 11 Cases"). The Petitioning Creditors other than Mr. Goldstein (collectively, the "Plan Proponents")[3] submit this Disclosure Statement to all Holders of Claims against the Debtors entitled to vote on the *Petitioning Creditors' Amended Joint Chapter 11 Plan of Reorganization of Eletson Holdings Inc. and its Affiliated Debtors*, a copy of which is attached hereto as **Appendix A** (as may be amended, supplemented, or otherwise modified from time to time, the "Plan").[4]

The purpose of this Disclosure Statement is to provide Holders of Claims entitled to vote on the Plan with adequate information to make an informed judgment as to whether to vote to accept or reject the Plan. The Plan Proponents are providing you with the information in this Disclosure Statement because you may be a creditor entitled to vote on the Plan. This Disclosure Statement is to be used solely in connection with evaluation of the Plan and not for any other purposes.

[3] While Mr. Goldstein is a Petitioning Creditor and represented by Togut, Segal & Segal LLP, Mr. Goldstein is not a "Plan Proponent" for purposes of the Plan because of his role as a member of the Creditors' Committee (as defined below).

[4] Capitalized terms not otherwise defined in this Disclosure Statement have the meanings ascribed to such terms in the Plan.

To be counted, your ballot must be duly completed, executed, and **actually received** by 5:00 p.m. (prevailing Eastern Time) on [August] [5], [_____] [__], 2024 (the "Voting Deadline"). Ballots may be delivered either via regular mail, courier, or delivery services to Kurtzman Carson Consultants, LLC dba Verita Global (the "Voting Agent") at the following address: Eletson Holdings Inc., *et al.*, Ballot Processing Center c/o KCC dba Verita, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245. Where applicable, ballots can be submitted via the Voting Agent's e-ballot platform by visiting https://www.kccllc.net/Eletson, clicking on the "Submit E-Ballot" section of the website and following the directions to submit their electronic Ballot.

If you have any questions on the procedures for voting, please call the Voting Agent at: 888-647-1737 (Domestic) or 310-751-2624 (International) or via email at EletsonBallots@https://www.kccllc.comnet/eletson/inquiry.

As explained in greater detail below, the Plan Proponents believe that the Plan is in the best interests of creditors and other stakeholders and is a fair means of moving these Chapter 11 Cases toward efficient resolution. All creditors entitled to vote on the Plan are urged to vote in favor of it.

B. Material Terms of the Plan

After years of the Debtors~~Debtors'~~ avoiding their contractual obligations to their creditors, the Plan proposed by the Plan Proponents—certain Petitioning Creditors that filed and/or joined the Involuntary Petitions—finally restructures the Debtors and provides material returns to creditors consistent with their rights under the Bankruptcy Code and applicable law. The Plan provides a viable pathway for the Debtors to expeditiously emerge from these Chapter 11 Cases and is supported by their major creditors and constituents, including the Creditors' Committee (as defined below), following extensive good faith and arm's length negotiations that resulted in material changes to the Plan Proponents' previously filed version of the Plan.

The Debtors require significant new capital investment to: (i) pay the administrative costs and other expenses associated with these Chapter 11 Cases; (ii) fund distributions to creditors consistent with the Plan, and (iii) fund the costs and expenses of reorganized Eletson Holdings ("Reorganized Holdings"), including, but not limited to ordinary course business expenditures and the fees and expenses of pursuing the Retained Causes of Action preserved under the Plan. The Plan provides for the funding of these amounts through a Rights Offering (as defined below) made available to certain creditors that is fully backstopped by the Backstop Parties (as defined below).

OVERVIEW OF THE PLAN

For the convenience of Holders of Claims entitled to vote on the Plan, an overview of the Plan is set forth below. Parties entitled to vote on the Plan should review this Disclosure Statement, the Plan and the other solicitation materials approved by the Bankruptcy Court prior to casting a vote on the Plan and making any elections with respect to the Rights Offering~~. (as defined below).~~

- The Plan will be funded pursuant to an up to $43.5 million (the "Rights Offering Amount") equity rights offering (the "Rights Offering") that will provide Holders of General Unsecured Claims (including, but not limited to, 2022 Notes Claims and Old Notes Claims, but excluding Convenience Claims) with subscription rights (the "Rights Offering Subscription Rights"), to purchase up to 75% of the equity in Reorganized Holdings (the "Reorganized Equity") (subject to dilution on account of the Backstop Premium and the EIP (as defined below)), at a price that represents an implied 10.8% discount to the mid-point of the plan equity value of up to US$62,058,088.00.[5]

[5] The Rights Offering is anticipated to be conducted in reliance on the exemption from registration set forth in section 1145 of the Bankruptcy Code. If the Plan Proponents determine, in consultation with the Creditors' Committee, that section 1145 of the Bankruptcy Code is not available for all or any portion of the Rights Offering, then the issuance of Reorganized Equity in connection with the Rights Offering will be made pursuant to exemptions from registration under applicable securities laws.

- The Rights Offering Amount is fully committed and backstopped by, one of the Petitioning Creditors, Pach Shemen (the "Initial Backstop Party"), pursuant to a backstop commitment agreement (the "Backstop Agreement"). The Backstop Agreement provides for, among other things, (i) the ability for certain General Unsecured Claimholders to join the Backstop Agreement as a "Backstop Party" (as defined below) and (ii) the Backstop Parties' commitment and obligation to purchase any Rights Offering Subscription Rights that are not purchased by General Unsecured Claimholders in connection with the Rights Offering. In exchange, each Backstop Party will receive, among other things, a backstop commitment premium in an aggregate amount equal to 8% of the Reorganized Equity issued and outstanding on the Effective Date (the "Backstop Premium"), subject to dilution on account of the EIP. The Backstop Premium shall be divided among the Backstop Parties in accordance with their Backstop Commitment (as defined in the Backstop Agreement).

- Any General Unsecured Claimholder that is eligible to purchase the Reorganized Equity issued pursuant to Section 5.9(b) of the Plan that desires to join the Backstop Agreement can do so by delivering a joinder to the Backstop Agreement and certain other information to counsel for the Petitioning Creditors by no later than ten (10) days following the Solicitation Commencement Deadline (as defined in the Rights Offering Approval Order (as defined below) (*i.e.*, [_____], 2024).[6]

- General Unsecured Claimholders that do not wish to participate in the Rights Offering will have the option to receive their Pro Rata Share of a $13.5 million pool of cash (referred to as the "GUC Cash Pool"). ~~General Unsecured Claimholders that do not wish to participate in the Rights Offering will also receive their Pro Rata Share of the GUC Cash Pool.~~

- Holders of Allowed General Unsecured Claims that would otherwise be in Class 3 with a face amount of US$1,000,000 or less (or Holders of Allowed General Unsecured Claims that voluntarily elect to reduce their Claim amount to US$1,000,000) will be treated as Convenience Claims in Class 4 and will receive payment of such Claim in Cash in an amount equal to 15% of the face amount of such Holder's Allowed Convenience Claim; *provided that*, if the aggregate distributions to Holders of Allowed Convenience Claims exceeds US$2,500,000 (the "Convenience Claim Cap"), then Holders of such Claims shall receive their Pro Rata Share of the Convenience Claim Cap in Cash.

[6] Detailed instructions on how to join the Backstop Agreement are set forth in the Part IV.E. below.

- The proceeds of the Rights Offering will be used to fund (i) the costs of consummation of the Plan, including, but not limited to, payments required to be made pursuant to the Plan including payment of Administrative Claims and priority Claims; (ii) funding of the GUC Cash Pool; and (iii) the costs and expenses of Reorganized Holdings, including, but not limited to, ordinary course business expenditures and the fees and expenses of pursuing the Retained Causes of Action preserved under the Plan.[7]

- The Plan provides for the issuance of 100% of the Reorganized Equity to General Unsecured Claimholders, subject to dilution on account of Reorganized Equity issued on account of the Rights Offering, the Backstop Premium, and an employee incentive plan for eligible employees of the Debtors' non-Debtor subsidiaries to be adopted and implemented by the new board of Reorganized Holdings (the "EIP"). Holders of Allowed General Unsecured Claims may elect to receive, and General Unsecured Claimholders that are unable to participate in the Rights Offering will be required to receive, their Pro Rata Share of Cash from the GUC Cash Pool.

- Pursuant to the Plan, Eletson Finance and Eletson MI will be dissolved on the Effective Date of the Plan, and the Plan will be administered through Reorganized Holdings.

ILLUSTRATIVE RECOVERY EXAMPLES

The following provides some illustrative hypothetical examples of what various Holders of Allowed General Unsecured Claims will recover under the Plan:

Example 1: A Holder of General Unsecured Claims (such as the Old Notes Claims or 2022 Notes Claims) in the amount of $175,000 will be treated in the Convenience Claims Class and receive a recovery equal to 15% of its Allowed Claim amount or $26,250; *provided* that if more than $16,666,667 in Claims elect treatment pursuant to the Convenience Claims Class, such Holder will receive its Pro Rata Share of $2,500,000.

Example 2: A Holder of General Unsecured Claims (such as the Old Notes Claims or 2022 Notes Claims) in the amount of $1,100,000 may choose either (a) to voluntarily reduce its Allowed Claim to $1,000,000 and be treated in the Convenience Claims Class (in which case it will receive $150,000 or its Pro Rata Share of the $2,500,000 as described in Example 1) or (b) treatment as a General Unsecured Claim in Class 3 (in which case it will have the option to receive either (i) its Pro Rata Share of the GUC Cash Pool (approximately $29,405.94) or (ii) its Pro Rata Share of 25%

[7] The Plan does not provide for the release of any claims by the Debtors or their estates, or by any third parties. The Plan provides for certain usual and customary exculpation for certain parties. *See* Plan, 1.71 and 10.5.

of the Reorganized Equity (subject to dilution) *plus* it will receive the right to participate in the Rights Offering and purchase its Pro Rata Share of up to 75% of the Reorganized Equity at a price that represents an implied 10.8% discount to the mid-point of the plan equity value of up to US$62,058,088.00.[8]

Example 3: A Holder of General Unsecured Claims (such as the 2022 Notes Claims) in the amount of $20,000,000 may choose either (a) to voluntarily reduce its Allowed Claim to $1,000,000 and be treated in the Convenience Claims Class (in which case it will receive $150,000) or (b) be treated as a General Unsecured Claim in Class 3 (in which case it will have the option to receive either (i) its Pro Rata Share of the GUC Cash Pool (approximately $534,653.47) or (ii) its Pro Rata Share of 25% of the Reorganized Equity (subject to dilution) *plus* it will receive the right to participate in the Rights Offering and purchase its Pro Rata Share of up to 75% of the Reorganized Equity at a price that represents an implied 10.8% discount to the mid-point of the plan equity value of up to US$62,058,088.00.

CERTAIN MATTERS RELATED TO THE REORGANIZED EQUITY

Holders of Allowed General Unsecured Claims that receive Reorganized Equity (including those Holders that elect to participate in the Rights Offering) will benefit from the net proceeds, if any, of Retained Causes of Action preserved under the Plan recovered by Reorganized Holdings or its non-Debtor subsidiaries. Such Retained Causes of Action include, among others, (a) claims against Levona Holdings Ltd. ("Levona") arising from the Arbitration (as defined below) or otherwise, (b) claims seeking to recover the Preferred Shares of Eletson Gas (each as defined below) or the value thereof from the Nominees (as defined below) and claims related thereto such as breach of fiduciary duty against the officers and directors that authorized the transfer of such shares.[9] As of the date hereof, the Preferred Shares (as defined below) are estimated to have a total amount of outstanding obligations of approximately $333 million (including principal and accrued and unpaid dividends)[10] and the Retained Causes of Action against Levona was assessed pursuant to the Award (as defined below) in the amount of approximately $87 million (plus fees, costs, and interest).

The Plan Proponents believe that the Plan adequately capitalizes Reorganized Holdings, including Reorganized Holdings' ordinary course business operations in accordance with the Plan, and the fees and expenses of pursuing the Retained Causes of Action. The Rights Offering Amount is structured to provide Reorganized Holdings with a cash position upon emergence of at least US$5,000,000.00

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[8] Solely for illustrative purposes, these examples use a total amount of General Unsecured Claims of $505 million. The actual figures are subject to change based on the Allowed amounts of General Unsecured Claims. For more information, see Part III.B.4. below.

[9] The Disclosure Statement does not provide an estimate of the likely outcomes of any such Retained Causes of Action, the costs and risks attendant to pursuing such claims, and the proceeds that might be realized (including after accounting for the risks of collectability, among other issues with enforcing any judgment).

[10] *See* Docket No. 591-1, page 24 of 102 n.3 and Docket No. 409.

on an assumed Effective Date of July 31, 2024 (the "Assumed Effective Date"), which is subject to change. Rights Offering proceeds that are not used to pay distributions under the Plan or fund the emergence cash position of US$5,000,000.00 will be returned to the Rights Offering participants. Cash needs under the Plan are uncertain and subject to change depending on, among other things, the number of Holders of General Unsecured Claims that elect to receive their Pro Rata Share of Cash from the GUC Cash Pool or that elect to be treated in the Convenience Claims Class, and the amount of Administrative Claims[11] that accrue through the Assumed Effective Date.

That said, recoveries, if any, on account of the Retained Causes of Action are highly uncertain and involve various costs and risks. If the pursuit of the Retained Causes of Action requires additional liquidity in the future, Reorganized Holdings may pursue various capital raising activities, including, but not limited to, certain transactions that may be dilutive to Holders of the Reorganized Equity. In the event additional funding is necessary to pursue litigation claims, the Initial Backstop Party is also willing backstop future capital raises for Reorganized Holdings to pursue the Retained Causes of Action preserved under the Plan.

If the Plan is not consummated, there can be no assurance that these Chapter 11 Cases will not be converted to a Chapter 7 liquidation. In a Chapter 7 liquidation, any distributions to creditors would be significantly delayed and reduced because of, among other things, the fees and expenses incurred in a liquidation under Chapter 7 of the Bankruptcy Code and the timeline for the liquidation of the Debtors' assets and distributions to creditors. Accordingly, if the Plan is not consummated, it is likely that creditors would realize lower recoveries on account of their allowed Claims than they would have otherwise received under the Plan.

Accordingly, the Plan Proponents believe that the treatment of Holders of Claims in the Impaired Classes of Claims eligible to vote will receive a greater recovery for such Holders than would be available in a Chapter 7 liquidation or ~~any alternative currently proposed plan, including~~ the plan proposed by the Debtors (the "Debtors' Plan"). Accordingly, the Plan Proponents believe that the Plan is in the best interests of Holders of Claims.

Thus, for the reasons discussed in this Disclosure Statement, the Plan Proponents urge you to return your Ballot accepting the Plan by the Voting Deadline.

[11] Administrative Claims include Claims for costs and expenses of administration of the Chapter 11 Cases, including Professional Fee Claims, U.S. Trustee Claims, fees~~Fees~~ under section 503(b) of the Bankruptcy Code (including the Petitioning Creditors' section 503(b)(3)(A) claims [Docket Nos. 265, 322], the 2022 Notes Trustee's section 503(b)(3)(A) claim [Docket No. 323], and New Agathonissos Finance's ("NAF") section 503(b)(3)(A) claim [Docket No. 324].

II. OVERVIEW OF THE DEBTORS

A. Summary of the Eletson Business

1. *Corporate Organization*

The Debtors are Eletson Holdings and its wholly owned subsidiaries Eletson Finance, and Eletson MI. The Debtors are part of a collection of companies that operate under the name "Eletson." The Debtors' corporate organization chart as of the Petition Date is attached hereto as **Appendix B**, which also depicts certain direct and indirect non-Debtor subsidiaries described below.

Eletson has historically been a family-owned international seaborne transportation company focused on the transport of refined petroleum products, liquified petroleum gas and ammonia. Eletson owns and operates a fleet of medium-range double hull product tankers, which are capable of carrying a wide range of refined petroleum products, such as fuel oil and vacuum gas oil and gas oil, gasoline, jet fuel, kerosene and naphtha, as well as crude oil. The Debtors are headquartered in Piraeus, Greece and maintain offices all over the world, including Stamford, Connecticut, and London.

Eletson Holdings is the ultimate parent of the Eletson entities. Eletson operates its fleet through wholly-owned direct or indirect non-Debtor subsidiaries of Eletson Holdings who either (i) own title to the vessels comprising Eletson's fleet or (ii) charter the vessels of Eletson's fleet. The Eletson fleet is managed by non-Debtor subsidiary Eletson Corporation ("Eletson Corp"), another wholly owned subsidiary of Eletson Holdings. Eletson Corp is subject to management agreements with the various entities in exchange for management fees. The Eletson fleet currently includes 16 vessels, 12 of which are owned by Eletson Gas LLC ("Eletson Gas") and four of which are operated by wholly owned subsidiaries of Eletson Holdings.[12] *See* Docket No. 394 ¶ 12; *see also* Docket No. 394 ¶¶ 12-14. In addition to Eletson Corp and the various entities that directly own or charter and operate the vessels in Eletson's fleet, there are several defunct corporate entities with no operations within the Eletson corporate structure. Eletson Holdings serves as the guarantor for a number of its subsidiaries' obligations as described in greater detail herein. Each of the Debtors are holding companies and do not maintain any ongoing operations or employ any employees outside of their officers and directors.

Eletson is closely held, controlled, and managed by three families: the Kertsikoff, Hadjieleftheriadis, and Karastamati families (the "Principal Families"). Each of those families beneficially hold approximately 30.7% of the equity in Eletson Holdings through separate Liberian trust companies. The remaining equity is beneficially held by two other families: the Zilakos and Andreoulakis families (the "Minority Families"). The three Principal Families and two Minority Families (collectively, the "Families") are all related. In addition to beneficially owning Eletson Holdings, members of the Families are also the directors and officers of Eletson

[12] "Owned" for these purposes means through finance leases or bareboat charters.

Holdings and of its various subsidiaries, including Eletson Corp and Eletson Gas.

2. Eletson Gas and the Arbitration

Eletson Gas is a gas shipping company that was formed in 2013 as a joint venture between Eletson Holdings and funds managed by Blackstone Tactical Opportunities (collectively, "Blackstone"). Eletson Holdings holds 100% of the common shares of Eletson Gas. According to the Debtors, at the beginning of 2022, Eletson Gas directly or indirectly owned 14 liquefied petroleum gas carriers, collectively worth more than $400 million. Eletson Gas reported total revenues in 2022 of approximately $115 million.

Eletson Gas is organized as a limited liability company with common and preferred membership interests (the "Preferred Shares"). Holders of the Preferred Shares are entitled to distributions from the revenues of Eletson Gas before holders of the common shares of Eletson Gas (the "Common Shares"). Until November 2021, Blackstone held the Preferred Shares. Eletson Holdings held and still holds the Common Shares. In 2021, Blackstone sold its interest in Eletson Gas to Levona Holdings Ltd. ("Levona"), making Levona the holder of the Preferred Shares. Subsequently, on February 22, 2022, Levona entered into a "binding offer letter" with Eletson Gas (the "BOL"), which gave Eletson Gas the option, upon the satisfaction of certain conditions, for Eletson Gas or its nominee to purchase the Preferred Shares from Levona for specified consideration (the "Option").

A dispute arose as to whether Eletson Gas had exercised the Option, and accordingly, on July 29, 2022, Eletson Holdings and Eletson Corp commenced an arbitration proceeding against Levona seeking a ruling that Eletson Gas had exercised its Option as well as damages from Levona (the "Arbitration").

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the characterization of the preceding paragraph. In the Debtors' view, the "dispute" referenced above involved a number of claims asserted against Levona directly arising out of and relating to Levona's material breaches of the LLC Agreement of Eletson Gas, including actions taken by Levona against Eletson for the sole purpose of causing harm to Eletson. These actions include, fraud, bribing Eletson's CFO, improperly disclosing sensitive, non-public and confidential information, wrongfully interfering with Eletson Gas' relationships with financiers, and the illegal arrest of Eletson Gas'~~Gas'~~ ships, among other harmful actions."

On March 13, 2023, after the Petition Date, the Debtors filed a motion for relief from the automatic stay [Docket Nos. 5, 6], seeking leave to proceed with the Arbitration (the "Stay Relief Motion"). On April 17, 2023, the Bankruptcy Court entered a stipulation and order modifying the automatic stay to permit Eletson Holdings and Eletson Corp to pursue the Arbitration, including to determine the ownership of Preferred Shares [Docket No. 48] (the "Stay Relief Order"). Notably, the Stay Relief Motion did not disclose that the Preferred Shares had purportedly already been transferred to the Cypriot nominees (the "Nominees") that are owned by the Principal Families. Indeed, the Stay Relief Motion provided that if the Debtors (or any other

party) prevailed in the Arbitration the Preferred Shares would be "returned to [Eleston] Gas or its nominee." Docket No. 6, at 4.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the assertions in the preceding paragraph. The Debtors state that as found in the Arbitration and subsequently confirmed by the District Court, the Preferred Shares were transferred to the Nominees pursuant to the BOL, effective as of March 11, 2022, well in advance of the filing of the Involuntary Petitions [Final Award at 96; District Court Order at 122-23]. Further, in the Debtors' view, the preceding paragraph fails to articulate that the Stay Relief Motion was necessary as the Involuntary Petitions were filed with the intention of staying the Arbitration and as a hedge against Levona's loss in the Arbitration."

On July 28, 2023, the arbitrator entered an interim award, which was superseded by a final award (the "Award") on September 29, 2023. The Award found that Eletson Gas had exercised the Option to acquire the Preferred Shares by, among other things, transferring shares in two vessels owned by Eletson Gas to Levona. The Award further found that the Preferred Shares were transferred to the Nominees on March 11, 2022. The Award also assessed almost $87 million in damages against Levona, plus fees, costs, and interest. None of those damages were awarded to Eletson Holdings. Instead, about half was awarded to the Nominees.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the assertions in the preceding paragraph. In the Debtors' view, the Award assessed (i) $43,455,122.21 in compensatory damages to Eletson Gas and the Nominees, (ii) $23,777,378.50 in punitive damages to Eletson Gas, (iii) $19,677,743.71 in punitive damages to the Nominees, and (iv) attorneys fees and costs "to the entity or individuals who paid those costs and fees," i.e., Eletson Corp [Final Award at 67, 99-101]."

On August 18, 2023, Eletson Holdings and Eletson Corp filed a petition in the United States District Court for the Southern District of New York (the "District Court") to confirm the Award. Among the findings they asked the District Court to approve is that the Preferred Shares were transferred to the Nominees. They also asked the District Court to approve, among other things, the Award of compensatory and punitive damages in favor of Eletson Gas and the Nominees.

On February 9, 2024, the District Court issued an opinion (the "District Court Opinion") that among other things, granted in part and denied in part Eletson Holdings' and Eletson Corp's petition to confirm the Award. The District Court confirmed the Award's finding that the Preferred Shares were transferred to the Nominees. However, the District Court Opinion provides that the Bankruptcy Court is the proper forum to "address the timing of the election by Eletson that the Preferred [Shares] should go to the Nominees and whether the Preferred [Shares] should be considered to be property of the estate or should be clawed back or avoided." District Court Opinion, at 89. The District Court Opinion vacated all awards for relief against the Pach Shemen (one of the Petitioning Creditors, a Plan Proponent, and the Initial Backstop Party, and is an affiliate of Levona), including compensatory and punitive

damages based upon violations of the Status Quo Injunction (as defined in the District Court Opinion), all awards of attorneys' fees, costs, and expenses related to the Involuntary Petitions and the Bondholder Litigation (as defined in the District Court Opinion). *Id.* at 124-25. In accordance with the District Court Opinion, Eletson Holdings, Eletson Corp, and Levona each submitted proposed judgments on February 23, 2024. *See* District Court Docket Nos. 94 and 95.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the assertions in the preceding paragraph. In the Debtors' view, the District Court substantially confirmed the award of compensatory and punitive damages against Levona, vacating only the following limited aspects of the Final Award: (i) the finding that Murchinson and Pach Shemen are alter egos of Levona; (ii) the finding that the Status Quo Injunction remains in effect until confirmation of the Final Award by the Arbitrator; (iii) the finding that Levona caused or directed affiliates to purchase 2022 Notes for the purpose of wrongfully commencing and then actually causing the commencement of the Bondholder Litigation and the filing of the Involuntary Petitions against the Debtors; (iv) the finding that Levona wrongfully declared a default under the loan provided by Levona; (v) the award of attorneys' fees, costs and expenses relating to the involuntary bankruptcy petition and Bondholder litigation in the amount of $3,007,266.20; and (vi) the award of relief based upon violations of the Status Quo Injunction."

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "In the Debtors' view, the District Court vacated relief against Pach Shemen because Pach Shemen was not a signatory to the Eletson Gas LLC Agreement or a party to the Arbitration. However, the District Court explicitly noted that "Eletson may yet have the opportunity to seek to hold Murchinson and Pach Shemen responsible for Levona's obligations under the Award." [District Court Order at 82]."

On April 19, 2024, the District Court issued a memorandum and order (the "Memorandum and Order") remanding the Award to the arbitrator to clarify his findings regarding punitive damages (the "Remand"). *See* District Court Docket No. 106. The Memorandum and Order also directs ~~the~~ Eletson Holdings, Eletson Corp, and Levona to submit a joint letter to the District Court within two weeks of any "substantive decision" of the arbitrator. *Id.*

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "In the Debtors' view, the District Court ordered the Arbitrator to address two questions. First, whether the arbitrator would not have awarded punitive damages, but for the finding of a violation of the Status Quo Injunction, and second, whether the arbitrator would have applied a different multiple of the compensatory damages in his calculation of the punitive damages award in the absence of the finding of a violation of the Status Quo Injunction."

On May 3, 2024, Levona filed a motion in the District Court seeking reconsideration of the Memorandum and Order and asking the District Court to vacate any punitive damages awarded (the "Motion for Reconsideration"). *See* District Court Docket Nos. 107 and 108. On May 8, 2024, Eletson Holdings and Eletson Corp filed a

letter in the District Court that explained that while the arbitrator has set May 24, 2024 as the deadline for final letter briefs on the Remand, the arbitrator will not rule on the Remand until the District Court rules on the Motion for Reconsideration. *See* District Court Docket No. 109. On May 8, 2024, the District Court directed Eletson Holdings, Eletson Corp, and Levona to meet to confer on whether they agree to brief the Motion for Reconsideration on an expedited basis and to stay the Remand pending a decision on the Motion for Reconsideration. *See* District Court Docket No. 110. The District Court also directed the parties to provide an update on May 10, 2024. *See id.* On May 10, 2024, Eletson Holdings and Eletson Corp filed a letter in the District Court that provided, among other things, that the parties have not agreed to stay the Remand, "would oppose an indefinite stay", they intend to file their opposition to the Motion for Reconsideration on May 10, 2024, and the briefing schedule for the Remand. *See* District Court Docket No. 111. On May 10, 2024, Levona also filed a letter in the District Court that provided, among other things, that the parties have not agreed to stay the Remand and asked the District Court to stay the Remand pending resolution on the Motion for Reconsideration. *See* District Court Docket No. 112.

On May 10, 2024, Eletson Holdings and Eletson Corp filed its opposition to the Motion for Reconsideration in the District Court. *See* District Court Docket No. 113. On May 13, 2024, the District Court directed Levona to reply to Eletson Holdings' and Eletson Corp's opposition by May 15, 2024, and stayed the Remand pending resolution on the Motion for Reconsideration. *See* District Court Docket No. 114. On May 15, 2024, Levona filed its reply in support of the Motion for Reconsideration. *See* District Court Docket No. 115. On May 30, 2024, Eletson Holdings and Eletson Corp filed a letter that asked the District Court to lift the stay it imposed on the Remand on May 13, 2024. *See* District Court Docket No. 117. On June 3, 2024, Levona filed a letter in response requesting that the District Court to continue to stay the Remand. *See* District Court Docket No. 118. On June 12, 2024, the District Court entered an order granting in part and denying in part the Motion for Reconsideration. *See* District Court Docket No. 121.

B. The Debtors' Assets

On October 10, 2023, the Debtors filed their schedules of assets and liabilities and statements of financial affairs [Docket Nos. 216-221] (together, the "Original Schedules"). The Original Schedules disclosed that the Debtors have no cash and the Debtors' only assets are equity interests in various subsidiaries and certain Litigation Claims (as defined below). The Original Schedules listed the value of the equity in each of the Debtors' subsidiaries as "$0."

On December 29, 2023, the Debtors filed an amended schedule A/B for Eletson Holdings [Docket Nos. 340] (the "Amended Schedules" and together, with the Original Schedules, the "Schedules"), disclosing an aggregate equity value of the Debtors' subsidiaries of $52.5 million. The Amended Schedules state that the $52.5 million valuation is based on "market value." At the section 341 meeting of the Debtors and their creditors held on January 5, 2024, however, the Debtors' Vice President stated that the $52.5 million number in the Amended Schedules was "book value" and that the actual value remains "unknown."

The Debtors' Schedules also identify certain Litigation Claims belonging to the Debtors' Estates, though the Schedules fail to identify these actions with specificity. Indeed, the Schedules merely state that the Debtors have "Claims against Wilmington Savings Fund Society, FSB", "Claims against Petitioning Creditors for Bad Faith Conduct," "potential Claims against various parties related to or arising from the Arbitration Award", and lastly, claims against Murchinson Ltd., Nomis Bay Ltd., and BPY Limited in these Bankruptcy Cases (collectively, the "Litigation Claims"). Further, the Debtors' Schedules do not state the nature of the Debtors' interest in the Litigation Claims.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the assertions in the preceding paragraphs and believe that the assertions above are misleading and mischaracterize the Debtors' reporting. The Debtors believe that the Schedules are a fair and accurate reporting of the Debtors' assets."

C. The Debtors' Liabilities

The Debtors' liabilities, based on the Debtors' books and records are set forth in their Schedules and the Debtors' Plan (as defined below). The Debtors' liabilities based on their prepetition capital structure can generally be summarized as (1) the Old Notes, (2) the 2022 Notes, (3) the OCM Guarantees, (4) the Azure Guarantees, (5) the Eletson Corp Guarantees, (6) the Initial Petitioning Creditors' Claims, and (7) Other Claims and Liabilities (each of which is defined and explained in greater detail below).

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the assertions in the following paragraphs. The Debtors assert that the summaries below provided by the Petitioning Creditors are misleading and omit material details. The Debtors encourage creditors to review the Debtors' Plan and related Disclosure Statement for a more accurate description of the Debtors' liabilities. Further the Debtors have filed a number of objections to the asserted liabilities listed below."

1. *The Old Notes*

In December 2013, Debtors Eletson Holdings and Eletson Finance co-issued First Preferred Ship Mortgage Notes (the "Old Notes" and the holders thereof, the "Old Noteholders") under an indenture dated December 19, 2013, in the aggregate principal amount of $300 million (the "Old Indenture"). Deutsche Bank Trust Company Americas (the "Old Notes Trustee") serves as the trustee for the Old Notes. The Old Notes had a maturity date of January 15, 2022.

In May 2018, Eletson Finance and Eletson Holdings initiated an exchange offer process for the Old Notes (the "2018 Note Exchange"), which closed in July 2018. Pursuant to the 2018 Note Exchange, approximately 98% of the Old Noteholders exchanged their Old Notes for the 2022 Notes (as defined below); approximately 2% of the Old Noteholders did not participate in the 2018 Note Exchange and retained their Old Notes.

The Debtors' Schedules list the Old Notes Trustee as having a disputed unsecured Claim against Eletson Finance for approximately $24,000. *See* Docket No. 220. However, the Old Notes Trustee filed a Proof of Claim against Eletson Holdings pursuant to the Old Notes for $5,953,704.07 for the unpaid principal amount of $300 million plus applicable interest, fees, and other charges. *See* Proof of Claim No. 2-1 against Eletson Holdings.

2. *The 2022 Notes*

On July 2, 2018, the Debtors entered into an indenture (the "2022 Indenture") pursuant to which the substantial majority of the Old Notes were exchanged for new First Preferred Ship Mortgage Notes due on January 15, 2022 (the "2022 Notes" and the holders thereof, the "2022 Noteholders"). The 2022 Notes were issued in an original face value amount of $314,068,360. Under the 2022 Indenture, Wilmington Savings Fund Society, FSB (the "2022 Notes Trustee") serves as trustee and collateral agent for the 2022 Notes. The 2022 Notes were secured by certain assets pledged as collateral (collectively, the "Collateral"), including, among other things: (i) all outstanding common shares or membership interests in Eletson Finance and certain guarantors under the 2022 Indenture; (ii) thirteen shipping vessels owned by guarantors under the 2022 Indenture (the "Note Vessels"); (iii) the earnings arising from freights, hires and other earnings from the operation and use of or relating to the Note Vessels, and (iv) all other cash and various accounts of Eletson MI and the guarantors set forth in the 2022 Indenture.

The Debtors concede that they breached their obligations under the 2022 Indenture long ago and, in fact, have "made no direct payments" under that contract, at any time. *See* Docket No. 41 ¶¶ 17, 64.

On June 24, 2019, in connection with their various breaches under the 2022 Indenture, the Debtors entered into a Restructuring Support Agreement (the "First RSA") with certain noteholders (the "Consenting Noteholders") including VR Global. As part of the First RSA and a consensual strict foreclosure executed in connection therewith, the Debtors transferred their interests in the 13 vessels that served as part of the Collateral for the 2022 Notes to a new entity called NAF for the benefit of the 2022 Noteholders in partial satisfaction of amounts owed under the 2022 Indenture and the 2022 Notes in the amount of $130 million. On August 9, 2019, the Consenting Noteholders terminated the First RSA.

On October 29, 2019, after the termination of the First RSA, the Debtors and the Consenting Noteholders entered into a second Restructuring Support Agreement (the "Second RSA").[13] The purpose of the Second RSA was to accomplish an alternative restructuring of the Old Notes and the 2022 Notes on the terms and conditions set forth therein and in a restructuring term sheet attached as an Exhibit to the Second RSA. That restructuring was to be effectuated through an out-of-court

[13] The Debtors did not inform the 2022 Notes Trustee of their entry into the Second RSA despite their contractual obligation under the 2022 Indenture to do so.

consent solicitation and exchange offer or through a joint prepackaged plan of reorganization in chapter 11 cases to be filed by the Debtors in the United States.

Under the Second RSA, the Debtors agreed to implement the restructuring contemplated therein on a timeline with milestones set forth in Exhibit C to the Second RSA. The timeline included twelve (12) separate milestones, starting with the entry into a memorandum of agreement, in form and substance acceptable to Eletson and the Consenting Noteholders, with respect to the sale of Eletson's interest in a particular vessel—the Salamina—as soon as reasonably practicable but in no event later than October 31, 2019. The Debtors also agreed under the Second RSA that any proceeds from the sale of the Salamina after payment of applicable professional fees would be paid pro rata to the Old Noteholders, the 2022 Noteholders, and claims arising under certain "Working Capital Facility Agreements" outstanding at the time.

As the Debtors have acknowledged themselves, they never satisfied a single milestone under the Second RSA, in material breach of the Second RSA's requirement (and fundamental purpose) that the Debtors would effectuate the contemplated restructuring within several months. As the Debtors acknowledged in discovery during the pendency of the Involuntary Petitions, the parties to the Second RSA decided to go in a different path and abandoned the milestones. In addition, certain of the Consenting Noteholders told the Debtors in January 2020 that the Second RSA was "dead."[14]

Despite entering into the First RSA and the Second RSA, the Debtors never actually attempted to restructure the 2022 Notes or the Old Notes in connection therewith (or after). Instead, the Debtors did nothing and allowed the Old Notes and the 2022 Notes to mature without repayment on January 15, 2022, resulting in approximately $100 million in additional interest accruing on the 2022 Notes between the execution of the Second RSA in October 2019 and the filing of the Involuntary Petitions in March 2023.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors dispute all of the allegations and assertions in this section. First, the Debtors asset that the Debtors made payments of PIK interest and undertook a tender offer which reduced the outstanding obligations under the 2022 Notes by approximately $8 million. Second, the Debtors assert that the Petitioning Creditors fail to state that as a result of the strict foreclosure agreement, the 2022 Indenture was amended to release all remaining Collateral that served as security under the 2022 Indenture. In the Debtors' view, the assertions regarding the Debtors' intent are meritless."

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "In the Debtors' view, the Petitioning Creditors' descriptions of the Second RSA are wholly deficient and omit material information

[14] *Declaration of Joshua Nemser In Support of (A) Involuntary Petitions and (B) Petitioning Creditors' Objection to the Debtors' Motion to Dismiss* [Docket No. 128] filed on July 18, 2023 ¶ 14.

regarding the terms and provisions of the Second RSA as well as its relationship to the Involuntary Petitions. As set forth in greater detail in the Debtors' Motion to Dismiss, pursuant to the Second RSA, signatories were restricted from selling, transferring, or assigning any interest they had in the 2022 Notes unless the transfer was to another holder of the 2022 Notes or the recipient joined the Second RSA. The Debtors further assert that in June 2020, well after the Second RSA was executed, the Debtors, more than seventy percent (70%) of the 2022 Noteholders, and others entered into a certain Stipulation Waiver and Release (the "OCM Financing Stipulation"), wherein a majority of the 2022 Noteholders acknowledged that they "[were] parties to that certain [Second RSA] . . . ." *OCM Financing Stipulation* at p. 1. The Debtors state that like the Second RSA, the OCM Financing Stipulation included a restriction on the transfer of the 2022 Notes. In the Debtors' view, any transfers of the 2022 Notes made in violation of the terms of these documents are void ab initio. In the Debtors' view, notwithstanding these transfer restrictions, the Initial Petitioning Creditors, in particular Pach Shemen, purport to be the beneficial holders of 2022 Notes in an amount that is mathematically impossible absent a transfer of 2022 Notes that were subject to restrictions on transfer. As the Second RSA was never terminated, the Debtors believe that Pach Shemen is not a valid 2022 Noteholder. The Debtors believe that had these bankruptcy proceedings not been initiated, the Debtors would have successfully refinanced their obligations in accordance with the terms of the relevant prepetition documents."

Each of the Debtors' Schedules list the 2022 Notes Trustee as having a disputed unsecured Claim against each of the Debtors for approximately $320,195,000. *See* Docket Nos. 216, 218, 220. However, the 2022 Notes Trustee filed a Proof of Claim against each of the Debtors pursuant to the 2022 Indenture and the 2022 Notes for approximately $366,011,815 for the unpaid principal amount of $194,862,074 plus applicable interest, fees, and other charges. *See* Proof of Claim No. 14 against Eletson Holdings; Proof of Claim No. 2 against Eletson MI; and Proof of Claim No. 2-2 against Eletson Finance. The 2022 Notes Trustee also filed a Proof of Claim against each of the Debtors pursuant to the 2022 Indenture and the 2022 Notes for fees and expenses in the amount of $1,872,764.44. *See* Proof of Claim No. 20 against Eletson Holdings; Proof of Claim No. 3 against Eletson MI; and Proof of Claim No. 3 against Eletson Finance.

3. *The OCM Guarantees*

Four subsidiaries directly or indirectly owned by Eletson Holdings are each party to bareboat charter agreements regarding the use of certain vessels owned by entities affiliated or associated with Oaktree Capital Management. Each of these vessels are described in greater detail below. The Petitioning Creditors understand that the $0 to $52.5 million figures from the Debtors' Amended Schedules are largely on account of these four bareboat charter arrangements.

Kinaros Charter. On June 24, 2020, OCM Maritime Rhine LLC ("OCM Rhine") entered into a bareboat charter agreement ("Kinaros Charter") with non-Debtor Kinaros Special Maritime Enterprise for the use of a vessel owned by OCM Rhine named the Kinaros. Pursuant to the Kinaros Charter, Kinaros Special Maritime Enterprise was obligated to make payments to OCM Rhine related to the charter of the Kinaros. The obligations were guaranteed by Eletson Holdings pursuant to that certain guarantee executed by Eletson Holdings in favor of OCM Rhine dated June 24, 2020

(the "Kinaros Guaranty"). Pursuant to the Kinaros Guaranty, Eletson Holdings guaranteed the full payment for all amounts due under the Kinaros Charter. According to the Debtors' Schedules, OCM Rhine has a disputed unsecured Claim against Debtor Eletson Holdings for $11,750,000. *See* Docket No. 216. According to OCM Rhine's Proof of Claim, as of the Conversion Date, the principal balance outstanding under the Kinaros Charter is $11,750,000 with outstanding payment-in-kind interest obligations of $217,417. *See* Proof of Claim No. 5-1 ¶ 9. As of the Conversion Date, OCM Rhine has not declared any event of default under the Kinaros Charter, however, the Chapter 11 Cases constitute a default under the Kinaros Guaranty.

Kimolos Charter. On June 24, 2020, OCM Maritime Yukon LLC ("OCM Yukon") entered into a bareboat charter agreement ("Kimolos Charter") with non-Debtor Kimolos II Special Maritime Enterprise for the use of a vessel owned by OCM Thames named the Kimolos. Pursuant to the Kimolos Charter, Kimolos II Special Maritime Enterprise was obligated to make payments to OCM Yukon related to the charter of the Kimolos. The obligations were guaranteed by Eletson Holdings pursuant to that certain guaranty executed by Eletson Holdings in favor of OCM Yukon dated June 24, 2020 (the "Kimolos Guaranty"). Pursuant to the Kimolos Guaranty, Eletson Holdings guaranteed the full payment for all amounts due under the Kimolos Charter. According to the Debtors' Schedules, OCM Yukon has a disputed unsecured Claim against Debtor Eletson Holdings for $12,450,000. *See* Docket No. 216. According to OCM Yukon's Proof of Claim, as of the Conversion Date, the principal balance outstanding under the Kimolos Charter is $12,450,000 with outstanding payment-in-kind interest obligations of $203,922. *See* Proof of Claim No. 6-1 ¶ 9. As of the Conversion Date, OCM Yukon has not declared any event of default under the Kimolos Charter, however, the Chapter 11 Cases constitute a default under the Kimolos Guaranty.

Fourni Charter. On June 24, 2020, OCM Maritime Autumn LLC ("OCM Autumn") entered into a bareboat charter agreement ("Fourni Charter") with non-Debtor Fourni Special Maritime Enterprise for the use of a vessel owned by OCM Autumn named the Fourni. Pursuant to the Fourni Charter, Fourni Special Maritime Enterprise was obligated to make payments to OCM Autumn related to the charter of the Fourni. The obligations were guaranteed by Eletson Holdings pursuant to that certain guaranty executed by Eletson Holdings in favor of OCM Autumn dated June 24, 2020 (the "Fourni Guaranty"). Pursuant to the Fourni Guaranty, Eletson Holdings guaranteed the full payment for all amounts due under the Fourni Charter. According to the Debtors' Schedules, OCM Autumn has a disputed unsecured Claim against Debtor Eletson Holdings for $12,450,000. *See* Docket No. 216. According to OCM Autumn's Proof of Claim, as of the Conversion Date, the principal balance outstanding under the Fourni Charter is $12,450,000 with outstanding payment-in-kind interest obligations of $229,239. *See* Proof of Claim No. 7-1 ¶ 9. As of the Conversion Date, OCM Autumn has not declared any event of default under the Fourni Charter, however, the Chapter 11 Cases constitute a default under the Fourni Guaranty.

Kastos Charter. On June 24, 2020, OCM Maritime Thames LLC ("OCM Thames") entered into a bareboat charter agreement ("Kastos Charter") with non-Debtor Kastos Special Maritime Enterprise for the use of a vessel owned by OCM Thames named the Kastos. Pursuant to the Kastos Charter, Kastos Special Maritime

Enterprise was obligated to make payments to OCM Thames related to the charter of the Kastos. The obligations were guaranteed by Eletson Holdings pursuant to that certain guaranty executed by Eletson Holdings in favor of OCM Thames dated June 24, 2020 (the "Kastos Guaranty"). Pursuant to the Kastos Guaranty, Eletson Holdings guaranteed the full payment for all amounts due under the Kastos Charter. According to the Debtors' Schedules, OCM Thames has a disputed unsecured Claim against Debtor Eletson Holdings for $12,450,000. *See* Docket No. 216. According to OCM Thames' Proof of Claim, as of the Conversion Date, the principal balance outstanding under the Kastos Charter is $12,450,000 with outstanding payment-in-kind interest obligations of $229,239. *See* Proof of Claim No. 8-1 ¶ 9. As of the Conversion Date, OCM Thames has not declared any event of default under the Kastos Charter, however, the Chapter 11 Cases constitute a default under the Kastos Guaranty.

The Debtors' Schedules list OCM Autumn, OCM Yukon, and OCM Thames as each having a disputed unsecured Claim against Debtor Eletson Holdings for $12,450,000, and OCM Rhine as having a disputed unsecured Claim for $11,750,000 (collectively, the "OCM Guaranty Claimants"). *See* Docket No. 216. As described above, although the OCM Guaranty Claimants have not declared an event of default under their respective charter agreements, each of the OCM Guaranty Claimants filed protective Proofs of Claims against Eletson Holdings for amounts owed by Eletson Holdings arising from and in connection with the bareboat charter agreements explained above. *See* Proof of Claim Nos. 5-8.

4. *The Azure Guarantees*

On August 24, 2017, Azure Nova Spring Co., Azure Nova Summer Co., Azure Nova Autumn Co., and Azure Nova Winter Co. (collectively, "Azure" or the "Azure Claimants") entered into bareboat charter agreements (collectively, the "Charters") with non-Debtors Antikeros Special Maritime Enterprise, Dhonoussa Special Maritime Enterprise, Polyaigos Special Maritime Enterprise and Strofades Special Maritime Enterprise (collectively, the "Azure Charterers") respectively, for the use and operation of vessels owned by Azure named the Antikeros, Dhonoussa, Polyaigos, and Strofades, respectively (collectively, the "Azure Vessels").

Pursuant to the Charters, the Azure Charterers were obligated to make payments to Azure related to the charter of the Azure Vessels. The obligations were guaranteed by Eletson Holdings and Eletson Corp pursuant to those certain guarantees executed by Eletson Holdings and Eletson Corp in favor of each Azure entity dated August 24, 2017 (collectively, the "Azure Guarantees"). Pursuant to the Azure Guarantees, Eletson Holdings guaranteed the full payment for all amounts due under the Charters. As security for Eletson Holdings' obligations under the Azure Guarantees, Eletson Holdings executed a share pledge agreement in favor of each Azure entity pursuant to which the equity of the respective Azure Charterer was placed as collateral to secure the obligations under the applicable Charter.

In March 2021, the Charters were terminated and the Azure Vessels were repossessed. As a result of this termination and repossession, two arbitrations were commenced by Azure, one against the Charterers seeking a determination of any amounts owed to Azure because of the termination of the Charters and repossession of

the Azure Vessels and a second against Eletson Holdings for any obligations arising from the Azure Guarantees which are asserted by Azure to be in an amount of no less than $94,799,702. Eletson Holdings disputes that defaults have occurred, or that obligations exist under the respective Azure Guarantees.

The Debtors' Schedules list the Azure Claimants as each having disputed unsecured Claims against Eletson Holdings for $12,000,000. *See* Docket No. 216. Each of the Azure Claimants filed a separate Proof of Claim against Eletson Holdings, each asserting a Secured Claim. However, the full amount listed in each Proof of Claim is asserted as an unsecured deficiency claim against Eletson Holdings for $94,799,702.40 in connection with the Charters. *See* Proof of Claim Nos. 9-12.

5. *The Eletson Corp Guarantees*

Non-Debtor Eletson Corp is the operational and technical management entity for various Eletson entities (including various of Eletson Holdings' non-Debtor subsidiaries). As Eletson Corp's parent entity, Eletson Holdings guaranteed certain obligations of Eletson Corp on a number of its unsecured obligations owed towards various banking entities in Greece, including Aegean Baltic Bank S.A., Alpha Bank S.A., and Piraeus Bank A.E.

The Debtors' Schedules list Aegean Baltic Bank S.A. as having a disputed unsecured Claim against Eletson Holdings for $4,000,019. *See* Docket No. 216. The Schedules list Piraeus Bank A.E. as having a disputed unsecured Claim against Eletson Holdings for $16,326,319. *See id*. Alpha Bank S.A. is also listed as having a disputed unsecured Claim against Eletson Holdings for $4,302,823. *See id.*

Aegean Baltic Bank S.A. filed a Proof of Claim against Eletson Holdings for $6,335,665.08 pursuant to a Eletson Corp guarantee for the unpaid principal of $5,555,514.40 plus applicable interest, fees, and other charges. *See* Proof of Claim No. 4. Hermes Acquisitions B DAC Serviced by Cepal Hellas also filed a Proof of Claim pursuant to a Eletson Corp guarantee for claims purchased from Alpha Bank S.A., totaling $4,302,198.44. *See* Proof of Claim No. 16. Lastly, Sunrise I NPL Finance DAC also filed a Proof of Claim against Eletson Holdings pursuant to a Eletson Corp guarantee for claims purchased from Piraeus Bank A.E., totaling $23,402,504.90. *See* Proof of Claim No. 22. The Sunrise I NPL Finance DAC Proof of Claim asserts a secured claim in the amount of $7,000,000 and an unsecured claim in the amount of $16,402,504.90. *See id.*[15]

6. *Initial Petitioning Creditors' Claims*

Each of the Initial Petitioning Creditors filed protective Proofs of Claims against each of the Debtors in the amounts of $2,234,807.36, $357,567.10, and $2,431.10,

[15] Proof of Claim No. 22 is based on three facility agreements, one of which included a first priority "prenotation of mortgage under articles 1274 et seq. of the Greek Civil Code, over an office property…in the amount of up to seven million Euro…the property is estimated to be worth approximately that amount." Proof of Claim No. 22 at 5.

respectively, pursuant to the *Second Application of the Petitioning Creditors Pursuant to Section 503(b)(3)(A) and 503(b)(4) of the Bankruptcy Code, for Allowance of Professional Fees,* filed on December 18, 2023 [Docket No. 322]. *See* Proofs of Claims Nos. 17-19 against Eletson Holdings; Proofs of Claims Nos. 4-6 against Eletson MI; and Proofs of Claims Nos. 4-6 against Eletson Finance.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the assertions in the preceding paragraph and the purported validity of any Proof of Claim filed by the Initial Petitioning Creditors."

7. *Other Claims and Liabilities*

The Debtors have other outstanding Claims from amounts owed to creditors prior to the Petition Date. Such amounts include, among other things, prepetition Claims by certain individual Old Noteholders (the "Individual Old Noteholder Claims"), NAF (the "NAF Claims") Levona (the "Levona Claim"), other miscellaneous scheduled claims (the "Miscellaneous Scheduled Claims"), and a prepetition tax Claim filed by the Internal Revenue Service (the "Tax Claim"). The Individual Old Noteholder Claims, NAF Claims, Levona Claim, and the Miscellaneous Scheduled Claims are explained in more detail below.

(a) The Individual Old Noteholder Claims

The Individual Old Noteholder Claims consist of the following and were not listed on the Schedules as Claims against any of the Debtors:

- Proof of Claim filed by Tracy Lee Gustafson against Eletson Holdings for bonds purchased in connection with the Old Notes totaling $117,978. *See* Proof of Claim No. 1;
- Proof of Claim filed by TR I/XII/W J. Fleishmnn/Dorette against Eletson Holdings for bonds purchased in connection with the Old Notes totaling $107,864.51. *See* Proof of Claim No. 3; and
- Proof of Claim filed by Middle East Shipping Agencies Overseas, Ltd. against Eletson Holdings for bonds purchased in connection with the Old Notes totaling $257,750 plus applicable interest, fees, and other charges. *See* Proof of Claim No. 15.

(b) NAF Claims

The NAF Claims consist of unsecured Claims against each of the Debtors for approximately $5,155,522. *See* Proof of Claim No. 13 against Eletson Holdings; Proof of Claim No. 1 against Eletson MI; and Proof of Claim No. 1 against Eletson Finance. The NAF Claims are based on amounts owed under the Old Notes and the Old Notes Trustee's fees and professional fees that the Old Notes Trustee had paid on behalf of the Debtors. *Id.* The Eletson Holdings Schedule lists the NAF Claim as a disputed unsecured Claim for $5,155,522 and separately, as a disputed unsecured Claim for $24,000 on the Eletson Finance Schedule. *See* Docket Nos. 216, 220.

(c) Levona Claim

The Levona Claim consists of an unsecured Claim for damages in connection with the facts related to the Arbitration and these Chapter 11 Cases, totaling $262,500,000, filed against Eletson Holdings. *See* Proof of Claim No. 21.

(d) Miscellaneous Scheduled Claims

Eletson MI's Schedules list Regus Management Group LLC as having a Claim against Eletson MI for $"741,70" in connection with an office lease. *See* Docket No. 218. Eletson Finance's Schedules list Thompson Hine LLP as having a Claim against Eletson Finance for $8,225 in connection with the provision of services. *See* Docket No. 220.

(e) Tax Claim

The Tax Claim consists of priority Claim in the amount of $313.23 and a general unsecured Claim in the amount of $319.97, both filed against Eletson Holdings for estimated amounts of unpaid corporate taxes. *See* Proof of Claim No. 23-1 filed against Eletson Holdings.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the asserted validity of each of the purported claims filed against the Debtors discussed in this subsection, many of which are subject to objections."

III. THE BANKRUPTCY CASES

A. The Involuntary Petitions and Related Cases

On the Petition Date, the Initial Petitioning Creditors filed the Involuntary Petitions against each of the Debtors. They were later joined by 11 additional petitioning creditors, including the 2022 Notes Trustee.[16] *See* Docket No. 102.

On April 14, the Debtors moved to dismiss the Involuntary Petitions [Docket No. 40], which was later supplemented at various points in response to additional creditors that filed joinders to the Involuntary Petitions [Docket Nos. 70, 108, 121, 122] (as supplemented, the "Motion to Dismiss"). Over the next few months, the Debtors and their creditors engaged in months of litigation, including discovery and related motion practice, resulting in millions of dollars in administrative expenses by the Debtors and fees and expenses incurred by their creditors in pursuing their contractual rights to repayment from the Debtors.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the assertions in the preceding paragraph. In the Debtors' view, Pach Shemen, the largest holder of 2022 Notes of the Initial Petitioning Creditors, obtained its claims against the Debtors mere months before filing the Involuntary Petitions. The Debtors believe that these claims were obtained in violation of the terms of the Second RSA and OCM Financing Stipulation, and that the filing of the Involuntary Petitions was an improper action taken in bad faith as part of a coordinated effort to harm the Debtors and provide a litigation advantage to Levona in the Arbitration. The Debtors have reserved all rights regarding the impropriety of the Involuntary Petitions."

Prior to the hearing on the Motion to Dismiss, upon the request of the Debtors, the Petitioning Creditors and the 2022 Notes Trustee, the Bankruptcy Court entered the *Order Appointing Hon. Allan L. Gropper (Ret.) as Mediator* [Docket No. 148] directing the parties towards a non-binding mediation (the "Initial Mediation") to address the issues surrounding the Motion to Dismiss. The Initial Mediation did not lead to any resolution. Just one day prior to the hearing on the Motion to Dismiss, the Debtors, the Petitioning Creditors, and the 2022 Notes Trustee entered into a stipulation which was read into the record on September 6, 2023 (the "Conversion Stipulation"). Pursuant to the Conversion Stipulation, the Debtors agreed to withdraw their Motion to Dismiss and voluntarily convert the pending Chapter 7 cases to cases under Chapter 11, and the Petitioning Creditors agreed not to object to the voluntary conversion. In

[16] The full list of creditors that filed the Involuntary Petitions and/or joined them are: Pach Shemen LLC, VR Global Partners, L.P., Alpine Partners (BVI), L.P., Gene B. Goldstein, Gene B. Goldstein, In His Capacity as Trustee of the Gene B. Goldstein and Francine T. Goldstein Family Trust, Mark Millet, In His Capacity as Trustee of the Mark E. Millet Living Trust, Mark Millet, In His Capacity as Trustee of the Millet 2016 Irrevocable Trust, Robert Latter, Tracy Lee Gustafson, Jason Chamness, Ron Pike, and NAF. Watson Farley & Williams LLP and Paleokrassas & Partners Law Firm (trading as Watson Farley & Williams Greece) (together, "WFW") former counsel to the Debtors, joined the Involuntary Petitions [Docket No. 61] but later withdrew after the Debtors paid WFW an undisclosed amount [Docket No. 101].

addition, pursuant to the Conversion Stipulation, the Debtors, the 2022 Notes Trustee, and the Petitioning Creditors agreed to, among other things, the following: (i) the Petitioning Creditors and the 2022 Notes Trustee would not file a motion to appoint an examiner, trustee, or limit exclusivity during the first 120 days of the Chapter 11 Cases; (ii) the Debtors agreed to withdraw adversary proceeding Case No. 23-1132 related to the filing of the Involuntary Petitions, without prejudice, and agreed not to reinitiate such a proceeding for the longer of four months or the end of the confirmation and vacatur proceedings concerning the Award; (iii) the Debtors' and Petitioning Creditors' professionals agreed not object to other professionals seeking retention as estate professionals; (iv) the Debtors' agreed not to object to a substantial contribution motion brought by the Petitioning Creditors seeking up to $1.5 million, with the express agreement that the Petitioning Creditors could seek additional amounts exceeding that sum; and (v) the Petitioning Creditors agreed not to object to or assert rights of recovery against the pre-petition fees sought by the Debtors' counsel of up to $2 million. *See* Sept. 6, Tr. at 9. Finally, the Conversion Stipulation was entered into without prejudice to all causes of action, claims, or defenses that the parties might thereafter assert, including, without limitation, the Debtors' rights to object to claims brought in the Chapter 11 Cases. *Id.*

On September 13, 2023, the Debtors filed a motion to convert the Chapter 7 cases [Docket No. 201], to which the Petitioning Creditors responded that a motion was unnecessary, and the cases should be converted immediately [Docket No. 203]. Following a hearing held on September 20, 2023, on September 25, 2023 the Bankruptcy Court entered an order converting the Chapter 7 cases to cases under Chapter 11 of the Bankruptcy Code [Docket No. 215] (the "Conversion Order").

B. Events in the Chapter 11 Cases

Since the entry of the Conversion Order, the Debtors did not file any first day motions. The limited filings made by the Debtors, as well as certain other material events in these Chapter 11 Cases, are described in greater detail below.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the characterization of the Debtors' filings in the preceding paragraph. The Debtors assert that the Debtors are holding companies without any ongoing operations, employees or bank accounts, and as such had no need to file any typical first day motions. Further, the Debtors state that the background and history of the Debtors as well as information regarding the Debtors' corporate structure was heavily litigated and discussed in the filings made prior to entry of the Conversion Order."

1. *Appointment of Creditors' Committee*

On October 20, 2023, the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed an official committee of unsecured creditors [Docket No. 233] (the "Creditors' Committee"). The Creditors' Committee is comprised of the following creditors: (a) Gene B. Goldstein, (b) Aegean

Baltic Bank S.A.,[17] and (c) the 2022 Notes Trustee. The Old Notes Trustee serves as an ex officio member.

2. *Estate Professionals*

Pursuant to orders of the Bankruptcy Court, the Debtors and the Creditors' Committee have retained certain professionals pursuant to sections 327 and 328 of the Bankruptcy Code (collectively, the "Estate Professionals"). The Debtors' only Estate Professional is Reed Smith LLP, as counsel [Docket Nos. 235 and 350]; the Creditors' Committee's Estate Professionals are (a) Dechert LLP, as counsel [Docket Nos. 273 and 351] and (b) FTI Consulting, Inc., as financial advisor [Docket Nos. 349 and 375].

By order dated February 7, 2024 [Docket No. 398] (the "Interim Comp Order"), the Bankruptcy Court established procedures for the Debtors' payment of certain of the fees and expenses of the Estate Professionals during the pendency of these Chapter 11 Cases, including pursuant to the filing of monthly fee statements and periodic interim fee applications. As of the date hereof, the following monthly fee statements have been filed:

- *First Monthly Fee Statement of Dechert LLP for the Period From October 25, 2023 Through November 30, 2023* [Docket No. 399] ("Dechert's First Fee Statement") seeking reimbursement of fees and expenses totaling $ 743,688.18;

- *Second Monthly Fee Statement of Dechert LLP for the Period From December 1, 2023 Through December 31, 2023* [Docket No. 400] ("Dechert's Second Fee Statement") seeking reimbursement of fees and expenses totaling $586,096.76;

- *Third Monthly Fee Statement of Dechert LLP for the Period From January 1, 2024 Through January 31, 2024* [Docket No. 433] ("Dechert's Third Fee Statement") seeking reimbursement of fees and expenses totaling $628,770.91;

- *Fourth Monthly Fee Statement of Dechert LLP for the Period From February 1, 2024 Through February 29, 2024* [Docket No. 529] ("Dechert's Fourth Fee Statement") seeking reimbursement of fees and expenses totaling $776,042.06;

- *Fifth Monthly Fee Statement of Dechert LLP for the Period From March 1, 2024 Through March 31, 2024* [Docket No. 609] ("Dechert's Fifth Fee Statement") seeking reimbursement of fees and expenses totaling $1,010,965.52;

[17] Aegean Baltic Bank S.A. has resigned as a member of the Creditors' Committee.

- *Sixth Monthly Fee Statement of Dechert LLP for the Period From~~from~~ April 1, 2024 Through April 30, 2024* [Docket No. 703] ("Dechert's Sixth Fee Statement~~" and together with Dechert's First Fee Statement, Dechert's Second Fee Statement, Dechert's Third Fee Statement, Dechert's Fourth Fee Statement, and Dechert's Fifth Fee Statement, the "Dechert Fee Statements~~") seeking reimbursement of fees and expenses totaling $1,083,448.33;

- *Seventh Monthly Fee Statement of Dechert LLP for the Period From May 1, 2024 Through May 31, 2024* [Docket No. 808] ("Dechert's Seventh Fee Statement" and together with Dechert's First Fee Statement, Dechert's Second Fee Statement, Dechert's Third Fee Statement, Dechert's Fourth Fee Statement, Dechert's Fifth Fee Statement, and Dechert's Sixth Fee Statement, the "Dechert Fee Statements") seeking reimbursement of fees and expenses totaling $737,128.66;

- *First Monthly Fee Statement of FTI Consulting, Inc. for the Period From December 8, 2023 Through December 31, 2023* [Docket No. 401] ("FTI's First Fee Statement") seeking reimbursement of fees and expenses totaling $233,115.77;

- *Second Monthly Fee Statement of FTI Consulting, Inc. for the Period From January 1, 2024 Through January 31, 2024* [Docket No. 434] ("FTI's Second Fee Statement") seeking reimbursement of fees and expenses totaling $600,417.73;

- *Third Monthly Fee Statement of FTI Consulting, Inc., for the Period From February 1, 2024 Through February 29, 2024* [Docket No. 530] ("FTI's Third Fee Statement") seeking reimbursement of fees and expenses totaling $334,953.94;

- *Fourth Monthly Fee Statement of FTI Consulting, Inc., for the Period From March 1, 2024 Through March 31, 2024* [Docket No. 610] ("FTI's Fourth Fee Statement") seeking reimbursement of fees and expenses totaling $407,858.63;

- *Fifth Monthly Fee Statement of FTI Consulting, Inc. for the Period From April 1, 2024 Through April 30, 2024* [Docket No. 704] ("FTI's Fifth Fee Statement~~" and together with FTI's First Fee Statement, FTI's Second Fee Statement, FTI's Third Fee Statement, and FTI's Fourth Fee Statement, the "FTI Fee Statements~~") seeking reimbursement of fees and expenses totaling $815,339.24;

- *Sixth Monthly Fee Statement of FTI Consulting, Inc. for the Period From May 1, 2024 Through May 31, 2024* [Docket No. 809] ("FTI's Sixth Fee Statement" and together with FTI's First Fee Statement, FTI's Second Fee Statement, FTI's Third Fee Statement, FTI's Fourth Fee Statement,

and FTI's Fifth Fee Statement, the "FTI Fee Statements") seeking reimbursement of fees and expenses totaling $588,325.27;

- *First Monthly Fee Statement of Reed Smith LLP, for the Period From January 1, 2024 Through January 31, 2024* [Docket No. 537] ("Reed Smith's First Fee Statement") seeking reimbursement of fees and expenses totaling $957,875.36;

- *Second Monthly Fee Statement of Reed Smith LLP, for the Period From February 1, 2024 Through February 29, 2024* [Docket No. 541] ("Reed Smith's Second Fee Statement") seeking reimbursement of fees and expenses totaling $929,877.18;

- *Third Monthly Fee Statement of Reed Smith LLP, for the Period From March 1, 2024 Through March 31, 2024* [Docket No. 618] ("Reed Smith's Third Fee Statement") seeking reimbursement of fees and expenses totaling $2,004,475.75; ~~and~~

- *Fourth Monthly Fee Statement of Reed Smith LLP, for the Period Fromfrom April 1, 2024 Through April 30, 2024* [Docket No. 702] ("Reed Smith's Fourth Fee Statement~~" and together with Reed Smith's First Fee Statement, Reed Smith's Second Fee Statement, and Reed Smith's Third Fee Statement, the "Reed Smith Fee Statements~~") seeking reimbursement of fees and expenses totaling $2,177,149.39; and~~.

- *Fifth Monthly Fee Statement of Reed Smith LLP, for the Period From May 1, 2024 Through May 31, 2024* [Docket No. 810] ("Reed Smith's Fifth Fee Statement" and together with Reed Smith's First Fee Statement, Reed Smith's Second Fee Statement, Reed Smith's Third Fee Statement, and Reed Smith's Fourth Fee Statement, the "Reed Smith Fee Statements") seeking reimbursement of fees and expenses totaling $1,412,270.51.

As of the date hereof, the Debtors filed objections to the Dechert Fee Statements and the FTI Fee Statements. *See* Docket Nos. 431, 432, 464, 465, 563, 564, 633 634, 737, 738, 836, and 837~~738~~. The Petitioning Creditors filed objections to the Reed Smith Fee Statements. *See* Docket Nos. 578, 659, and 729. The Creditors' Committee also filed objections to the Reed Smith Fee Statements. *See* Docket Nos. 577, 588, 660, and 731.

Pursuant to the Interim Comp Order, as of the date hereof, the following interim fee applications have been filed:

- *First Interim Fee Application for Dechert LLP for the Period from October 25, 2023 Through December 31, 2023* [Docket No. 417] ("Dechert's First Interim Fee Application") seeking interim allowance of fees and expenses totaling $1,329,784.94;

- *First Interim Fee Application of FTI Consulting, Inc. for the Period From*

December 8, 2023 Through December 31, 2023 [Docket No. 418] ("FTI's First Interim Fee Application") seeking interim allowance of fees and expenses totaling $233,115.77;

- *First Interim Fee Application of Reed Smith LLP, Counsel to the Debtors for the Period From September 25, 2023 Through December 31, 2023* [Docket No. 444] ("Reed Smith's First Interim Fee Application") seeking interim allowance and payment of fees and expenses totaling $2,527,171.78; and

- *Second Interim Fee Application of Reed Smith LLP, Counsel to the Debtors and Debtors in Possession, for Compensation and Reimbursement of Expenses for the Period January 1, 2024 to April 30, 2024* [Docket No. 776] ("Reed Smith's Second Interim Fee Application") seeking interim allowance and payment of fees and expenses totaling $6,069,386.60.

- *Second Interim Fee Application of Dechert LLP for Compensation for Services Rendered and Reimbursement of Expenses as Counsel to the Official Committee of Unsecured Creditors for the Period From January 1, 2024 Through April 30, 2024* [Docket No. 788] ("Dechert's Second Interim Fee Application") seeking interim allowance and payment of fees and expenses totaling $3,471,835.00.

- *Second Interim Fee Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses as Financial Advisor to the Official Committee of Unsecured Creditors for the Period from January 1, 2024 through April 30, 2024* [Docket No. 789] ("FTI's Second Interim Fee Application") seeking interim allowance of fees and expenses totaling $1,939,040.00.

As of the date hereof, the Debtors objected to Dechert's First Interim Fee Application and to FTI's First Interim Fee Application. *See* Docket Nos. 485 and 486. On March 14, 2024, the Petitioning Creditors and the Creditors' Committee objected to Reed Smith's First Interim Fee Application. *See* Docket Nos. 484 and 487. On March 18, 2024, the U.S. Trustee objected to Dechert's First Interim Fee Application and to FTI's First Interim Fee Application. *See* Docket No. 492. On April 12, 2024, the Debtors filed an omnibus reply in support Reed Smith's First Interim Fee Application, and the Creditors' Committee filed replies in support of Dechert's First Interim Fee Application and FTI's First Interim Fee Application. *See* Docket Nos. 583, 585, 586.

Following a hearing held on May 8, 2024, on May 14, 2024, the Bankruptcy Court entered a first interim order granting 80% of the fees in Dechert's First Interim Fee Application, FTI's First Interim Fee Application, and the "bankruptcy" fees set forth in Reed Smith's First Interim Fee Application subject to a full reservation of rights for the final fee hearing. [Docket No. 676]. Also, on May 8, 2024, the Bankruptcy Court heard argument, and reserved decision, on Reed Smith's "arbitration" fees. On June 7, 2024, the Bankruptcy Court issued an oral decision approving Reed Smith's fees relating to the Arbitration, and on June 12, 2024, entered an order requiring that such

fees be paid by non-Debtor Eletson Corp [Docket No. 769].

A hearing on Reed Smith's Second Interim Fee Application, Dechert's Second Interim Fee Application, and FTI's Second Interim Fee Application is scheduled for July 31, 2024, and objections are due on July 24, 2024. *See* Docket Nos. 776, 789, 788.

3. *Issues with the Debtors' Reporting Obligations*

(a) Schedules and Statements

Although the Conversion Date occurred on September 25, 2023, the Debtors failed to make any filings until October 10, 2023, when the Debtors filed the Original Schedules. *See* Docket Nos. 216-221. The Original Schedules were bereft of any detail, listing, for example, 73 subsidiaries each valued at $0, as well as the unvalued Litigation Claims against certain of the Petitioning Creditors. *See* Docket Nos. 2016 at 10-11 and 217 at 1-4, 11-27. It was not until December 29, 2023, over two months later—after the U.S. Trustee, the Creditors' Committee, and the Petitioning Creditors questioned those disclosures—that the Debtors filed the Amended Schedules, reducing the number of their disclosed subsidiaries to 60, but increasing the aggregate equity value in such subsidiaries from $0 to $52.5 million. *See* Docket No. 340 at 9-11.

(b) 2015.3 Reports

The Debtors did not file any Rule 2015.3 Reports (the "2015.3 Reports") until November 20, 2023, which was weeks late, and did so for only ten of their subsidiaries. *See* Docket No. 271.[18] Further, the Debtors initially failed to disclose a 2015.3 Report for Eletson Gas and, only after the U.S. Trustee demanded the Debtors do so, the Debtors filed a 2015.3 Report for Eletson Gas on November 30, 2023. *See* Docket No. 284 at 3. The Debtors did not file 2015.3 Reports for the remaining dozens of other subsidiaries until December 29, 2023. *See* Docket No. 341.

On February 12, 2024, the Debtors filed their second set of 2015.3 Reports. *See* Docket No. 409.

(c) Monthly Operating Reports

The Debtors have filed their monthly operating reports for the periods ending 9/30/2023, 10/31/2023, 11/30/2023, 12/31/2023, 1/31/2024, 2/29/2024, 3/31/2024, ~~and~~ 4/30/2024, and 5/31/2024. [Docket Nos. 268-270, 276-277, 280, 325-327, 427-~~-~~429, 508-510, 603-605, ~~and~~ 706-708, and 804-806] (the "Monthly Operating Reports"). The Monthly Operating Reports fail to disclose intercompany balances. Certain of the Monthly Operating Reports also contain various inaccuracies, including stating that the Debtors had not retained counsel (which they had, *see supra* B.2) and

[18] Bankruptcy Rule 2015.3 requires, among other things, that the Debtors file "periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holders a substantial or controlling interest." Bankruptcy Rule 2015.3(a).

that the Debtors had not filed a chapter 11 plan or disclosure statement (which they had at the time, *see infra* C.1).

The Debtors' Monthly Operating Reports also state that the Debtors are not in compliance with their obligations to pay quarterly U.S. Trustee fees pursuant to 28 U.S.C. § 1930.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the allegations and characterizations of the Debtors' reporting obligations in these Chapter 11 Cases. The Debtors assert that as a threshold matter, the Debtors are current on all reporting obligations as noted by the Bankruptcy Court, and these filing contain accurate information to the best of the Debtors' knowledge. As previously stated, the Debtors have never taken the position that the Debtors have no assets, and filed "$0" on the Debtors' Schedules as the Debtors' assets were illiquid and of an undetermined value. The Debtors assert that the Debtors have disclosed all information required under the Bankruptcy Code and have repeatedly supplemented filings upon the request of parties in interest."

4. *The Bar Date and Claims Process*

(a) Bar Date and Claims

By order dated November 9, 2023 [Docket No. 264] (the "Bar Date Order"), the Bankruptcy Court established December 18, 2023 at 4:00 p.m. (prevailing Eastern Time) as the general bar date (the "General Bar Date") and March 25, 2024 at 4:00 p.m. (prevailing Eastern Time) as the governmental bar date (the "Governmental Bar Date").

As of the date hereof, approximately thirty-seven (37) Proofs of Claims were filed against the Debtors. After adjustments for duplicative Claims and other adjustments, the Petitioning Creditors estimate that Allowed General Unsecured Claims in these Chapter 11 Cases may range from approximately $505 million in a low scenario to $768 million in a high scenario. The low scenario of $505 million assumes allowance of the asserted amounts of the proofs of claims filed by the Old Notes Trustee ($5,953,704.07) [*see* Proof of Claim No. 2-1], the 2022 Notes Trustee ($366,011,815) [*see* Proof of Claim No. 14], the Azure Claimants ($94,799,702.40) [*see* Proof of Claim Nos. 9-12], Aegean Baltic Bank S.A., Alpha Bank S.A., and Piraeus Bank A.E, as the Eletson Corp Guarantee Claimants ($6,353,665.08, $4,302,198.44, and $23,402,504.90) [*see* Proof of Claims Nos. 4, 16, and 22], and NAF ($5,155,522) [*see* Proof of Claim No. 13]) but does not include the Levona Claim ($262,500,000) [*see* Proof of Claim No. 21-1]. The high scenario assumes all of these claims are allowed as well as the Levona Claim for a total of approximately $768 million. The actual allowed amount of General Unsecured Claims in these Chapter 11 Cases may vary.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the assertions in the previous paragraph to the extent that the Petitioning Creditors assert that any of the Claims asserted against the Debtors, other than those undisputed non-contingent

Claims scheduled by the Debtors, are valid claims entitled to payment in any amount or are otherwise enforceable against the Debtors and/or their estates. The Debtors believe that the estimates provided by the Petitioning Creditors above are incorrect and the actual range of allowed claims against the Debtors and their estates will be significantly lower."

(b) Claims Objections

On January 28, 2024, the Debtors filed several objections and omnibus objections to Proofs of Claims. Specifically, the Debtors objected to the Proofs of Claims filed by the Initial Petitioning Creditors [Docket No. 377] (the "Initial Petitioning Creditors' Claim Objection"), Levona [Docket No. 378] (the "Levona Claim Objection"), NAF [Docket No. 379] (the "NAF Claim Objection"), and the 2022 Notes Trustee [Docket No. 380] (the "2022 Notes Trustee Claim Objection"), as well as an omnibus objection to claims filed by the Individual Old Noteholders and the Old Notes Trustee, arguing that they are duplicative of the master Proofs of Claims filed by the Old Notes Trustee [Docket No. 376] (the "Omnibus Claim Objection" and collectively, with the Initial Petitioning Creditors' Claim Objection, the Levona Claim Objection, the NAF Claim Objection, and the 2022 Notes Trustee Claim Objection, the "Claims Objections").

At the Debtors' request, on February 12, 2024, the Bankruptcy Court approved an adjournment of all briefing and hearing dates and deadlines with respect to the Claims Objections pending further discussion at the February 27 Status Conference (as defined below). *See* Docket No. 405 (the "Adjournment Order"). A status conference on the Initial Petitioning Creditors' Claim Objection, the NAF Claim Objection, the 2022 Notes Trustee Claim Objection, and the Omnibus Claim Objection took place at a hearing on May 15, 2024 (the "May 15 Hearing"), along with the additional matters discussed herein. *See* Docket No. 635. A continued status conference on the Initial Petitioning Creditors' Claim Objection, the NAF Claim Objection, the 2022 Notes Trustee Claim Objection, and the Omnibus Claim Objection took place on~~is scheduled for~~ June 18, 2024 (the "June 18 Hearing"). *See* Docket No. 710. The Bankruptcy Court scheduled an evidentiary hearing on the Initial Petitioning Creditors' Claim Objection, the NAF Claim Objection, the 2022 Notes Trustee Claim Objection, and the Omnibus Claim Objection for July 23, 2024 and if necessary, July 24, 2024. *See* Docket No. 735.

The Objection Deadline on Omnibus Claim Objection, the Initial Petitioning Creditors' Claim Objection, the NAF Claim Objection, and the 2022 Notes Trustee Claim Objection was May 7, 2024 [Docket No. 635], and the following responses were filed: the Old Notes Trustee filed a response to the Omnibus Claim Objection [Docket No. 637], the 2022 Notes Trustee filed a response to the 2022 Notes Trustee Claim Objection [Docket No. 639], which was joined by the Petitioning Creditors [Docket No. 645], the Initial Petitioning Creditors filed a response to the Initial Petitioning Creditors' Claim Objection [Docket No. 643], and NAF filed a response to the NAF Claim Objection [Docket No. 644].

At the May 31 Status Conference, the Bankruptcy Court adjourned the Levona Claim Objection to a date to be determined.

5. *The Motions for Appointment of a Chapter 11 Trustee*

(a) The UCC Trustee Motion

On February 6, 2024, the Creditors' Committee filed a motion for the appointment of a chapter 11 trustee [Docket No. 394] (the "UCC Trustee Motion"), which was joined by: (i) the Old Notes Trustee on February 12, 2024 [Docket No. 404]; (ii) the 2022 Notes Trustee on February 15, 2024 [Docket No. 420]; and (iii) the Petitioning Creditors on March 12, 2024 [Docket No. 477]. On March 12, 2024, Intrum Hellas Societe Anonyme Management of Receivables from Loans and Credits as the servicing claims manager for SUNRISE I NPL FINANCE DAC, filed a statement in support of the UCC Trustee Motion [Docket No. 476].

Pursuant to the Adjournment Order, the Bankruptcy Court adjourned all briefing and hearing dates and deadlines with respect to the UCC Trustee Motion pending further discussion at the February 27 Status Conference. At the February 27 Status Conference, the Bankruptcy Court scheduled the UCC Trustee Motion, among others, for a three-day trial that occurred on April 9, 2024 through April 11, 2024 (the "April 9 Trial"), and directed the parties to submit a Scheduling Order (as defined below). On March 22, 2024, the Debtors filed an omnibus objection to the Petitioning Creditors' Trustee Motion (as defined below) and the UCC Trustee Motion [Docket No. 513] (the "Omnibus Objection"). On March 22, 2024, the Nominees also filed an omnibus objection to the UCC Trustee Motion, the UST Trustee Motion (as defined below), and the Petitioning Creditors' Trustee Motion [Docket No. 518] (the "Nominees' Omnibus Objection"). On April 2, 2024, the Creditors' Committee filed a reply in support of the UCC Trustee Motion. *See* Docket No. 549. On April 2, 2024, the Petitioning Creditors filed a reply in support of the Trustee Motions (as defined below). *See* Docket No. 547.

(b) The UST Trustee Motion

On February 16, 2024, the U.S. Trustee filed a second motion for the appointment of a chapter 11 trustee [Docket No. 424] (the "UST Trustee Motion"), which was joined by the Petitioning Creditors on March 12, 2024 [Docket No. 477].

At the February 27 Status Conference, the Bankruptcy Court scheduled the UST Trustee Motion for the April 9 Trial. In accordance with the Scheduling Order, on March 22, 2024, the Debtors filed an objection to the UST Trustee Motion and the Nominees filed the Nominees' Omnibus Objection. *See* Docket Nos. 512 and 518. On April 2, 2024, the U.S. Trustee filed a reply in support of the UST Trustee Motion. *See* Docket No. 544. On April 2, 2024, the Petitioning Creditors filed a reply in support of the Trustee Motions. *See* Docket No. 547.

(c) Petitioning Creditors' Emergency Trustee Motion

On March 11, 2024, the Petitioning Creditors filed the *Petitioning Creditors' Emergency Motion to Appoint a Trustee* [Docket No. 468] (the "Petitioning Creditors' Trustee Motion" and, together with the UCC Trustee Motion, and the UST Trustee Motion, the "Trustee Motions"), which was also heard at the April 9 Trial. *See* Docket Nos. 480 and 481. On March 22, 2024, the Debtors filed the Omnibus Objection and the

Nominees filed the Nominees' Omnibus Objection. *See* Docket Nos. 513 and 518. On April 2, 2024, the Petitioning Creditors filed a reply in support of the Trustee Motions. *See* Docket No. 547.

6. *April 9 Trial*

The April 9 Trial on the Trustee Motions began on April 9, 2024 and concluded on April 11, 2024. On April 18, 2024, the Debtors', the Nominees, the U.S. Trustee, the Creditors' Committee, and the Petitioning Creditors each filed post-trial briefs in further support of their respective positions. *See* Docket Nos. 594-598.

On May 29, 2024, the Bankruptcy Court issued a memorandum opinion and order [Docket No. 721] (the "Trustee Decision") denying the Trustee Motions and finding that the various movants had not met the high burden of demonstrating (i) that cause existed for the appointment of a trustee and (ii) that the appointment of a trustee was in the best interests of parties in interest.

On June 12, 2024, the Creditors' Committee appealed the Trustee Decision to the U.S. District Court for the Southern District of New York. *See* Docket No. 768.

7. *DIP Financing*

At the February 27 Status Conference, counsel to the Creditors' Committee raised the issue that the Debtors had not paid the undisputed portion of the Creditors' Committee's professionals' fees (the "Outstanding Fees"). After further discussion at the February 27 Status Conference, the Bankruptcy Court directed the parties to provide an update to the Bankruptcy Court by February 29, 2024. On February 29, 2024, the Debtors filed a letter [Docket No. 443] stating that the Debtors intended to pursue Bankruptcy Court approval for a debtor-in-possession financing loan with undisclosed terms as of that time from a non-Debtor subsidiary, Eletson Gas, to pay the Outstanding Fees.

At a status conference on March 6, 2024, the parties discussed the foregoing fee issues, among other things, and the Bankruptcy Court directed the Debtors to share their proposed debtor-in-possession financing term sheet with the parties, and update the Bankruptcy Court by end of day on Friday, March 8, 2024. On Thursday, March 7, 2024, counsel for the Debtors provided counsel for the Creditors' Committee (and not the Petitioning Creditors) with a copy of a proposed term sheet for the Original DIP Facility (as defined below) mere hours before it was filed on the docket.

On March 7, 2024, the Debtors filed the *Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to Obtain Postpetition Financing (B) Granting Liens and Providing Superiority Administrative Expense Status (C) Modifying the Automatic Stay, (D) Scheduling a Final Hearing and (E) Granting Related Relief* [Docket No. 458] (the "DIP Motion") for approval of a senior secured, superpriority debtor-in-possession financing facility (the "Original DIP Facility") on the terms set forth in the Original DIP term sheet, attached to the DIP Motion as Exhibit C (the "Original DIP Term Sheet"). The proposed lender is "EMC Gas Corporation and such other of its affiliates that agree

to participate in the DIP Facility" (the "DIP Lender")—a subsidiary of Eletson Gas, which is itself a subsidiary of Eletson Holdings. Eletson Holdings owns 100% of the common stock of Eletson Gas and there is substantial overlap among their officers and directors.

On March 8, 2024, the Petitioning Creditors submitted a financing proposal to counsel for the Debtors that the Petitioning Creditors believed was significantly better for the Debtors and their estates (the "PC Proposal") than that set forth in the Original DIP Term Sheet.[19] Among other things, the PC Proposal is on an entirely *unsecured and administrative claims-only (not superpriority)* basis and provides substantially more liquidity ($10 million) for the Debtors than the grossly inadequate $4 million under the Original DIP Facility. The PC Proposal would also not result in a default if and when the Bankruptcy Court grants the pending Trustee Motions and, in the case of a default, would not permit the lender to foreclose on the Debtors' assets (as there is no collateral).

After the Petitioning Creditors delivered the PC Proposal to the Debtors, on March 15, 2024, the Debtors received a revised term sheet from the DIP Lender that was "economically identical" to the PC Proposal (the "Revised DIP Term Sheet"), which the Debtors "tentatively accepted." Docket No. 513, ¶ 45. As of the date hereof, the Revised DIP Term Sheet has not been filed with the Bankruptcy Court.

The Omnibus Objection provides that the Debtors' need for DIP financing was "resolved in the short term" and on March 17, 2024, the Debtors informed the Bankruptcy Court that they "were given consent by the financiers of the [special maritime entity subsidiaries ("SMEs")] to permit some portion of the funds held by the SMEs to be made available to [Eletson] Holdings as a dividend." *Id.* This "provided the Debtors with the requisite liquidity to immediately pay all outstanding and payable administrative expenses" including the Outstanding Fees. *Id.* The Omnibus Objection further provides that on March 18, 2024, counsel to the Creditors' Committee confirmed receipt of payment of the Outstanding Fees. *Id.*

On March 18, 2024, the Debtors adjourned the DIP Motion to the April 9 Trial. *See* Docket No. 494. The Omnibus Objection provides that the "Debtors are still evaluating whether they are still in need of the DIP Facility." Docket No. 513, ¶ 45. As of the date hereof, the U.S. Trustee objected to the DIP Motion.[20] *See* Docket No. 482. On March 28, 2024, the Debtors adjourned the DIP Motion to April 16, 2024. *See* Docket No. 539. On April 10, 2024, the Debtors adjourned the DIP Motion to May 8, 2024. *See* Docket No. 572. On April 26, 2024, the Debtors adjourned the DIP Motion to June 18, 2024. *See* Docket No. 619. On June 7, 2024, the Debtors withdrew the DIP Motion without prejudice. *See* Docket No. 758.

[19] The PC Proposal is attached to the Petitioning Creditors' Trustee Motion as Exhibit B.

[20] The Omnibus Objection provides that on "March 18, 2024 the [U.S. Trustee] stated that they had no objection to the DIP Facility and deferred to the Debtors' business judgment on the selection of unsecured postpetition facilities." Docket No. 513, ¶ 45.

8. *Vessel Arrest*

On May 2, 2024, the Creditors' Committee filed a letter (the "May 2 Letter"), informing the Bankruptcy Court that one of the vessels owned by the SMEs, which are wholly owned subsidiaries of Eletson Holdings may have been arrested (the "Vessel Arrest"). *See* Docket No. 630. The May 2 Letter provides that the Debtors did not inform the Creditors' Committee or the Bankruptcy Court of the Vessel Arrest until the Creditors' Committee and the Petitioning Creditors asked the Debtors. *See id.* ("[the Debtors confirmed that the vessel had been arrested in Freeport, Bahamas on April 25 and provided some information concerning the arrest.").

On May 3, 2024, the Debtors filed a response to the May 2 Letter (the "May 3 Letter"). *See* Docket No. 631. The May 3 Letter describes and attaches the information the Debtors provided to the Creditors' Committee regarding the Vessel Arrest, and states that the Debtors do not expect to suffer any damages as a result, among other things. *Id.* The May 3 Letter also provides that the claim that led to the Vessel Arrest was made by a former charterer, who is also the current charterer of two other SMEs. *Id.*

At a hearing held on other matters on May 8, 2024, the parties provided a further update on the Vessel Arrest and explained that the Vessel Arrest was only lifted after that former charterer paid into court its charter hire payments that it would otherwise have made for the two other SMEs. As a result of those payments, those two SMEs will not produce any earnings to Eletson Holdings for a month. The Debtors informed the Bankruptcy Court that they would continue to provide information about the impact of the Vessel Arrest.

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the characterizations of the arrest and Debtors' communication with the Creditors' Committee. The Debtors assert that Counsel for Debtors was in contact with the Creditors' Committee regarding the vessel arrest on April 29, 2024, and provided updated and detailed reports from the officers of the Bareboat Charterer detailing the facts and circumstances concerning the arrest. The Debtors assert that the arrest did not relate to the performance of the vessel's voyage or carriage of cargo onboard. Instead, the Debtors assert that the arrest was brought by a previous charter of the vessel to obtain security for an old claim against the SME related to purported consequential delay damage related to the transit of the vessel through the Panama Canal in May 2023. The Debtors state that the arrest was dealt with swiftly and efficiently, without causing delay."

9. *The LCIA and BVI Proceedings*

On July 21, 2023, Levona filed a Request for Arbitration ("First RFA") in the London Court of International Arbitration ("LCIA") asserting claims as lender against Eletson Gas as borrower under an Intra-Group Loan Agreement dated March 11, 2022 and amended April 5, 2022. Levona subsequently filed a second Request for Arbitration ("Second RFA") against Eletson Gas on September 21, 2023 concerning the BOL which was also the subject of the JAMS Arbitration. The First RFA and Second

RFA were consolidated into one proceeding and discovery is currently under way.

On March 11, 2024, the Corp and Eletson Gas filed an application in the British Virgin Islands ("BVI") for a worldwide freezing order ("WFO") against Levona and Tropical Island International Ltd ("Tropical Island"). On March 14, 2024, the BVI Court granted the WFO against Levona and Tropical Island. Proceedings are ongoing.

C. The Debtors' Plan and Related Negotiations

1. *The Debtors' Unconfirmable, Insider "New Value" Plan*

Per the Conversion Stipulation, the Petitioning Creditors agreed, among other things, not to oppose or seek to terminate the Debtors' exclusive right to file a chapter 11 plan for the first 120 days after the Conversion Date.[21] In the Petitioning Creditors' opinion, during the 120 days post-conversion, the Debtors did nothing to progress these Chapter 11 Cases in good faith. The Debtors did not reach out to the Petitioning Creditors to discuss any form of consensual resolution of the Debtors' obligations, much less discuss a plan during the 120-day exclusivity period. The Petitioning Creditors understand that Debtors also refused to engage with the Creditors' Committee, even after instructed by the Bankruptcy Court to do so.

On January 23, 2024—the very last day of the Debtors' exclusivity period—the Debtors filed a proposed chapter 11 plan of reorganization [Docket No. 370] (the "Debtors' Initial Plan") and a related disclosure statement [Docket No. 371] (the "Debtors' Initial Disclosure Statement").

Under the Debtors' Initial Plan, creditors will receive almost no recoveries, while the Debtors' existing shareholders will retain their equity interests in Eletson Holdings despite the Debtors proposing to provide creditors almost no recoveries. The Debtors propose to fund their plan with an up to $10 million contribution by their existing shareholders in an undisclosed amount of cash and/or other assets (the "Initial Shareholder New Value Contribution"), which proposed funding was not subject to a market test or made available to any parties other than the Debtors' insiders.

On April 8, 2024—the eve of the April 9 Trial on the Trustee Motions, the Debtors filed an amended version of the Debtors' Initial Plan [Docket No. 570] (the "Debtors' Amended Plan").

The Petitioning Creditors' believe that neither the Debtors' Initial Plan nor the Debtors' Amended Plan was proposed in good faith. It is the Petitioning Creditors' view that the Debtors' Amended Plan is unconfirmable for at least four reasons. *First*, the Debtors' Amended Plan violates the absolute priority rule and bedrock bankruptcy principles and case law, including Supreme Court precedent, that shareholders cannot

[21] Section 1121(b) of the Bankruptcy Code provides that "[e]xcept as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter." 11 U.S.C. § 1121(b). The initial 120-day exclusivity period is subject to extension by the Bankruptcy Court for "cause." 11 U.S.C. § 1121(d).

be given the exclusive right to invest new value in the debtor absent a market test. The Debtors' Amended Plan allows the Debtors' shareholders to retain their equity interests, unimpaired for a contribution of undisclosed cash and /or other assets with an aggregate value of $30 million (the "Amended Shareholder New Value Contribution" and together with the Initial Shareholder New Value Contribution, the "Shareholder New Value Contribution"). *Second*, the Debtors' Amended Plan violates the "best interests" of creditors test because nearly every single class of claims, if not all, would receive more in a hypothetical chapter 7 liquidation where 100% of the value of the Debtors would be available for creditors prior to shareholders receiving value on account of their interests. *Third*, the Debtors' Amended Plan impermissibly classifies general unsecured claims in a way that is designed to gerrymander an impaired accepting class of claims by separately classifying similar claims without a valid business purpose. *Fourth*, the Debtors' Amended Plan lacks any indicia of good faith, including that it has not been discussed with the Petitioning Creditors or the Creditors' Committee prior to filing and impairs classes of claims despite having the ability to keep them unimpaired. Additionally, the Debtors' Amended Plan would provide the Debtors' directors and officers with broad releases for both prepetition and postpetition conduct, through various exculpation and injunction provisions, even though the Creditors' Committee (and others) has identified material claims against the directors and officers. Finally, the Debtors' Amended Plan improperly caps the fees incurred by counsel to the Creditors' Committee.

The Debtors' Amended Plan was not accompanied by an amended disclosure statement, and it was not until April 26, 2024 that the Debtors filed an amended version of the Debtors' Initial Disclosure Statement [Docket No. 621] (the "Debtors' Amended Disclosure Statement").

On May 13, 2024, the Debtors filed further amended versions of the Debtors' Amended Plan [Docket No. 671] (the "Debtors' Second Amended Plan") and the Debtors' Amended Disclosure Statement [Docket No. 672] (the "Debtors' Second Amended Disclosure Statement"). On May 14, 2024, the Debtors filed a valuation analysis [Docket No. 687] (the "Debtors' Valuation Analysis"). Just like the Debtors' prior filings, the Petitioning Creditors believe that the Debtors' Second Amended Plan was not proposed in good faith and the Debtors' Second Amended Disclosure Statement lacks adequate information for creditors to cast an informed vote. The Debtors' Second Amended Disclosure Statement still does not contain any financial projections. There are also conclusory explanations that the Petitioning Creditors believe are inconsistent with the facts about how the Debtors "marketed" financing opportunities for their plan and "negotiated" the Shareholder New Value Contribution with their shareholders and insiders. The Debtors' Second Amended Plan also appears to have materially reduced creditors' recoveries by providing for a "Gas Ownership Settlement" that expressly provides that the Debtors' contemplated litigation trust will not include any claims or causes of action against Levona and permits the Gas Ownership Defendants (defined as Eletson Gas, the Nominees, and/or any officers or directors of the same) to settle not only potentially valuable claims against Levona but also the claims and causes of action in connection with the transfer of the Gas Preferred Shares. These provisions are not explained in the Debtors' Second Amended Disclosure Statement, were made without any negotiation with the Debtors' creditors, and are further evidence of the Debtors' bad faith.

When the Debtors' filed the Debtors' Initial Plan and the Debtors' Initial Disclosure Statement, the Debtors also filed a motion for approval of the Debtors' Initial Disclosure Statement and procedures for the solicitation of votes with respect to the Debtors' Initial Plan [Docket No. 372] (the "Debtors' Solicitation Motion"). The Debtors' Solicitation Motion was scheduled to be heard at the May 15 Hearing. *See* Docket No. 635 and 655. On May 9, 2024, Levona and the Petitioning Creditors filed objections to the Debtors' Solicitation Motion, which the Debtors replied to on May 13, 2024. *See* Docket Nos. 648, 651, 668, and 670. Pursuant to the Debtors' request, the Bankruptcy Court extended the Creditors' Committee's objection deadline on the Debtors' Solicitation Motion to May 13, 2024 at 4:00 p.m. *See* Docket No. 650. On May 13, 2024, the Creditors' Committee filed an objection and reservation of rights to the Debtors' Solicitation Motion [Docket No. 669], which was joined by the 2022 Notes Trustee [Docket No. 674], and which the Debtors' replied to May 14, 2024. *See* Docket No. 686.

On May 14, 2024, the Debtors' filed a revised proposed order approving the Debtors' Solicitation Motion. *See* Docket No. 690.

At the May 15 Hearing, the Bankruptcy Court considered the Debtors' Solicitation Motion, in addition to the other matters, and continued the May 15 Hearing to give the Debtors an opportunity to revise the Debtors' Second Amended Plan and the Debtors' Second Amended Disclosure Statement to address various issues raised at the May 15 Hearing.

On May 30, 2024, the Bankruptcy Court scheduled a status conference for May 31, 2024 [Docket No. 723] (the "May 31 Status Conference"). The morning of the May 31 Status Conference, the Debtors filed further amended versions of the Debtors' Second Amended Plan [Docket No. 725] (the "Debtors' Revised Second Amended Plan") and the Debtors' Second Amended Disclosure Statement [Docket No. 726] (the "Debtors' Revised Second Amended Disclosure Statement"). Just like the Debtors' prior filings, the Petitioning Creditors believe that the Debtors' Revised Second Amended Plan was not proposed in good faith and the Debtors' Revised Second Amended Disclosure Statement lacks adequate information for creditors to cast an informed vote. The Debtors' Revised Second Amended Disclosure Statement contains conclusory and misleading statements about how the Debtors negotiated the "Collections Contribution" and the Shareholder New Value Contribution, among other things.[22] The Debtors' Revised Second Amended Disclosure Statement also does not clearly explain the Retained Causes of Action Contribution or the Excess SME Proceeds concept, which impacts creditors' recoveries under the Debtors' Revised Second Amended Plan.

[22] The Creditors' Committee believes that the likelihood that the Debtors collect the full value of the Award is low. The Creditors' Committee acknowledges that Levona may only have assets sufficient to partially satisfy the Award. The Creditors' Committee believes that the cumulative execution risks and costs of collection weigh against the Debtors' view that $50 million may be returned to the Litigation Trust on account of the Award.

On June 6, 2024, the Debtors filed further amended versions of the Debtors' Revised Second Amended Plan and the Debtors' Revised Second Amended Disclosure Statement. *See* Docket Nos. 744 and 746.

On June 12, 2024, the Petitioning Creditors and the Creditors' Committee (joined by the 2022 Notes Trustee) each filed supplemental objections to the Debtors' Solicitation Motion [Docket Nos. 771, 772 and~~&~~ 773] (the "Supplemental DS Objections"). In general, the Supplemental DS Objections argue that the Debtors' further revised disclosure statements continue to lack "adequate information" and describe a chapter 11 plan that is patently unconfirmable. As such, the Supplemental DS Objections request that the Court deny the Debtors' Solicitation Motion and reject the Debtors' request to solicit their plan. On June 14, 2024, the Debtors filed a reply to the Supplemental DS Objections. *See* Docket No. 785. On June 14, 2024, the Debtors filed further amended versions of the Debtors' Revised Second Amended Plan and the Debtors' Revised Second Amended Disclosure Statement. *See* Docket Nos. 786 and 787.

At the June 18 Hearing, the Bankruptcy Court granted the Debtors' Solicitation Motion, and directed the Debtors and the Petitioning Creditors to submit a joint solicitation order to the Bankruptcy Court. At the June 18 Hearing, the Bankruptcy Court also directed the Debtors to add additional disclosures to the Debtors' Revised Second Amended Disclosure Statement. On July 5, 2024, the Debtors filed solicitation versions of the Debtors' Revised Second Amended Plan and the Debtors' Revised Second Amended Disclosure Statement. *See* Docket Nos. 839 and 840. ~~A hearing with respect to the Debtors' Solicitation Motion is currently scheduled for June 18, 2024.~~

The Debtors have requested the following text be included, which the Petitioning Creditors disagree with: "The Debtors disagree with the characterization of the various iterations of the Debtors' Plan and associated Disclosure Statements. The Debtors assert that as a threshold issue, the assertion that the Debtors' Plan is patently unconfirmable as an unmarketed new value plan is a conclusion of law that is without merit and contrary to the facts of these Chapter 11 Cases. As noted by the Bankruptcy Court, the Debtors made the affirmative decision to allow the exclusivity period to expire to market test the Debtors'~~Debtors'~~ Plan in accordance with settled case law. It is the Debtors' view that as both the Debtors and the Petitioning Creditors have made significant changes to their plans and increased the value provided to creditors, it is clear the Debtors' marketing process is working. In the Debtors' view, the assertion that the Debtors'~~Debtors'~~ Plan was not proposed in good faith is equally meritless. In the Debtors' view, the Debtors have engaged in good faith with parties in interest in these Chapter 11 Cases, including the Creditors'~~Creditors'~~ Committee, to materially improve the terms of the Debtors'~~Debtors'~~ Plan and increase the recovery for Creditors entitled to a recovery under the Debtors'~~Debtors'~~ Plan. The Debtors encourage all Creditors to review the terms of the Debtors' Plan and associated Disclosure Statement for an accurate description of the terms of the Debtors' Plan, a more fulsome and accurate description of the Debtors' plan process and an understanding of the recovery creditors would be entitled to under the Debtors' Plan."

2. *The Petitioning Creditors' Motion to Terminate Exclusivity*

On January 29, 2024, the Petitioning Creditors filed a motion to terminate the Debtors' exclusivity period [Docket No. 384] (the "Exclusivity Termination Motion"), which was joined by the 2022 Notes Trustee [Docket No. 419]. On March 12, 2024, the Creditors' Committee filed a statement in support of the Exclusivity Termination Motion [Docket No. 473]. The Exclusivity Termination Motion argues that the Debtors forfeited exclusivity by filing the Debtors' Initial Plan, which is an unconfirmable new value plan (*id*. at 18), and that even if the Debtors had not filed an unconfirmable new value plan, termination is warranted under the *Adelphia* factors (*id*. at 19-29). The Exclusivity Termination Motion also argues that the Debtors have repeatedly demonstrated that they have no intention of advancing these Chapter 11 Cases to a good faith resolution. *Id*. at 18, 22.

Pursuant to the Adjournment Order, the Bankruptcy Court adjourned all briefing and hearing dates and deadlines with respect to the Exclusivity Termination Motion pending further discussion at the February 27 Status Conference. At the February 27 Status Conference, the Bankruptcy Court scheduled the Exclusivity Termination Motion for the April 9 Trial.

On March 25, 2024, the Debtors' exclusivity periods expired under the Bankruptcy Code without the Debtors seeking any extension.

3. *Mediation*

On February 13, 2024, the Debtors filed a motion to compel mediation regarding the Debtors' Initial Plan and other issues affecting these Chapter 11 Cases [Docket No. 412] (the "Motion to Compel Mediation"). On February 14, 2024, the Petitioning Creditors and the Creditors' Committee each filed letters in response to the Motion to Compel Mediation [Docket Nos. 414 and 415]. The Petitioning Creditors asserted that the Motion to Compel Mediation was unnecessary, intended to create additional delay and cost, and the timing of the filing was further indication of the Debtors' lack of good faith in participating in the mediation. Nevertheless, the Petitioning Creditors indicated that they were ready, willing, and able to participate in mediation as soon as possible. The Creditors' Committee agreed with the Petitioning Creditors, and further suggested that the parties use the time leading up to the February 27 Status Conference to explore "whether it would be feasible to reach a mediated resolution of these cases" and proposed that Judge Allan L. Gropper, (Ret.) who previously presided over the Initial Mediation of these parties in September 2023, serve as the mediator. *See* Docket No. 415 at 1.

On February 15, 2024, the Bankruptcy Court adjourned all briefing and hearing dates and deadlines with respect to the Motion to Compel Mediation pending further discussion at the February 27 Status Conference. At the February 27 Status Conference, the Bankruptcy Court directed the parties to participate in the Chapter 11 Mediation (as defined below).

4. *February 27 Status Conference*

In accordance with the Bankruptcy Court's Adjournment Order entered on February 12, 2024, the parties met and conferred regarding a joint status report setting forth their respective positions, which status report was filed on February 26, 2024 [Docket No. 435]. At the status conference held on February 27, 2024 (the "February 27 Status Conference"), the Bankruptcy Court directed the parties to mediate (the "Chapter 11 Mediation") before Judge Allan L. Gropper, (Ret.) (the "Mediator"). On March 13, 2024, the Bankruptcy Court entered the order re-appointing the Mediator [Docket No. 479] (the "Mediation Order"), which directed the Debtors, the Petitioning Creditors, the Creditors' Committee, the Nominees, Levona, the 2022 Notes Trustee, Eletson Corp, and Eletson Gas to mediate the Mediation Matters (as defined in the Mediation Order). The Chapter 11 Mediation began on March 27, 2024. The Chapter 11 Mediation continued thereafter. While the parties negotiated and engaged in the Chapter 11 Mediation in good faith, the parties were not able to reach settlement on the Mediation Matters.

At the February 27 Status Conference, the Bankruptcy Court also scheduled the April 9 Trial on the UCC Trustee Motion, the UST Trustee Motion, and the Exclusivity Termination Motion. On March 8, 2024, the Bankruptcy Court entered the scheduling order on the UCC Trustee Motion, the UST Trustee Motion, and the Exclusivity Termination Motion [Docket No. 467] (the "Scheduling Order"), which set March 22, 2024 as the objection deadline and April 2, 2024 as the reply deadline on the UCC Trustee Motion, the UST Trustee Motion, and the Exclusivity Termination Motion.[23] *See* Docket No. 467.

5. *Expiration of Exclusivity*

On March 25, 2024, the Debtors' exclusivity periods expired under the Bankruptcy Code without the Debtors seeking any extension. Accordingly, on March 26, 2024, the Petitioning Creditors as Plan Proponents filed a prior version of the Plan and Disclosure Statement. *See* Docket Nos. 531 and 532.

On April 10, 2024, the Petitioning Creditors filed a motion for approval of the prior Disclosure Statement and procedures for the solicitation of votes with respect to a prior version of the Plan [Docket No. 574] (the "Petitioning Creditors' Solicitation Motion"). The Petitioning Creditors' Solicitation Motion was heard at the May 15 Hearing. *See* Docket No. 632 and 656. On May 9, 2024, the Debtors filed an objection to the Petitioning Creditors' Solicitation Motion, which the Petitioning Creditors replied to on May 13, 2024. *See* Docket Nos. 653 and 667. On May 14, 2024, the Creditors' Committee filed a statement in support of the Petitioning Creditors' Solicitation Motion.

[23] Subsequently, the Petitioning Creditors' Trustee Motion and the DIP Motion were scheduled to be heard at the April 9 Trial. *See* Docket Nos. 481 and 494.

See Docket No. 689. No other parties filed any pleadings with respect to the Petitioning Creditors' Solicitation Motion.

D. The Petitioning Creditors' Plan and Related Negotiations

Following the expiration of the Debtors' exclusivity periods, on March 26, 2024, the Plan Proponents filed an initial version of the Plan [Docket No. 531] (the "PC Initial Plan") and related disclosure statement [Docket No. 532]. Following the filing of the PC Initial Plan, the Plan Proponents and their advisors engaged in substantial negotiations with various creditors and constituents in these Chapter 11 Cases, including the Creditors' Committee and their advisors, among others. Following these discussions, on May 10, 2024, the Plan Proponents filed a *Notice of Filing of (1) Anticipated Modifications to the Petitioning Creditors' Joint Chapter 11 Plan of Reorganization of Eletson Holdings Inc. and its Affiliated Debtors and (2) Certain Appendices Related to the Petitioning Creditors' Disclosure Statement Related Thereto* [Docket No. 658]. On May 13, 2024, the Plan Proponents filed an amended version of the Plan and an amended Disclosure Statement.

On May 14, 2024, the Plan Proponents filed further amended versions of the Plan and the amended Disclosure Statement [Docket Nos. 695 and 696]. Among other things, the Plan and Disclosure Statement contain a number of significant changes from that set forth in the PC Initial Plan, such as:

- Decreasing the Backstop Premium from 10% to 8%;
- Increasing the GUC Cash Pool from US$12,500,000 to US$13,500,000;
- Increasing the Convenience Claim Threshold Amount from US$200,000 to US$1,000,000;
- Increasing the Convenience Claim Cap from US$1,000,000 to US$2,500,000
- Increasing the recovery percentage for Holders of Allowed Convenience Claims from 10% to 15%;
- Giving all General Unsecured Claimholders the option to become Backstop Parties; and
- Establishing the composition of the New Board and certain governance matters relating thereto.

The key terms of the Plan, including creditors' estimated recoveries are summarized below.

At the May 15 Hearing, the Bankruptcy Court approved the Petitioning Creditors' Solicitation Motion and the Rights Offering Procedures Motion (as defined below), but declined to enter the orders approving the respective motions until the

Debtors addressed the various issues raised at the May 15 Hearing on the Debtors' Second Amended Plan and the Debtors' Second Amended Disclosure Statement.

At the May 31 Status Conference, the parties discussed the Debtors' Revised Second Amended Plan and the Debtors' Revised Second Amended Disclosure Statement and the Bankruptcy Court continued the hearing on the Debtors' Revised Second Amended Disclosure Statement to June 7, 2024. *See* Docket No. 736. The Bankruptcy Court also directed the parties to submit a joint status report to the Bankruptcy Court on June 6, 2024. *Id.*

On June 6, 2024, the Plan Proponents filed further amended versions of the Plan and the amended Disclosure Statement [Docket Nos. 740 and 741]. On June 17, 2024, the Plan Proponents filed a further amended version of the amended Disclosure Statement [Docket No. 796].

E. The Petitioning Creditors' "Alternative Plan"

At the May 15 Hearing, the Petitioning Creditors expressed their desire to submit an alternative offer based on the structure of the Debtors' Amended Plan. After the May 15 Hearing, the Petitioning Creditors continued to express interest in submitting an alternative offer, but the Debtors did not engage and could not identify who at the Debtors would receive and evaluate such bid. *See* Docket Nos. 712, 718 and~~&~~ 720. In order to progress these cases, on June 5, 2024, the Petitioning Creditors provided an alternative bid term sheet (the "PC Alternative Term Sheet ") to counsel for the Debtors and the Creditors' Committee and the next day filed the PC Alternative Term Sheet on the docket. *See* Docket No. 745. The PC Alternative Term Sheet sets forth the terms of a comprehensive restructuring of the existing debt and other obligations of the Debtors that is based on the Debtors' Amended Plan but provides significant improvements for creditors. *Id.*

On June 11, 2024, the Petitioning Creditors filed the *Petitioning Creditors' Alternative Chapter 11 Plan for Eletson Holdings Inc. and its Affiliated Debtors* [Docket No. 762] (the "PC Alternative Plan") and the related disclosure statement [Docket No. 763] (the "PC Alternative DS"). On June 17, 2024, the Petitioning Creditors filed revised versions of the PC Alternative Plan and the PC Alternative DS. *See* Docket Nos. 797, 798, 801, and 802.

A motion to consider approval of the PC Alternative DS [Docket No. 764] (the "PC Alternative Solicitation Motion") was heard at~~is scheduled for~~ the June 18 Hearing consistent with the Court's direction at a hearing held on June 7, 2024. On June 14, 2024, the Petitioning Creditors filed financial wherewithal information related to the PC Alternative Plan. *See* Docket No. 781. On June 14, 2024, the Debtors filed an objection to the PC Alternative Solicitation Motion and the Creditors' Committee filed an objection and reservation of rights to the PC Alternative Solicitation Motion. *See* Docket Nos. 783 and 784. On June 17, 2024, the Petitioning Creditors filed an omnibus reply in support of the PC Alternative Solicitation Motion. *See* Docket No. 794.

At the June 18 Hearing, the Bankruptcy Court granted the PC Alternative Solicitation Motion, and directed the Debtors and the Petitioning Creditors to submit a joint solicitation order to the Bankruptcy Court.

IV. SUMMARY OF THE PLAN

THE FOLLOWING SUMMARY HIGHLIGHTS CERTAIN PROVISIONS OF THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN (A COPY OF WHICH IS ATTACHED HERETO AS **APPENDIX A**). IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE PLAN SHALL CONTROL.

A. Unclassified Claims

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims (including, Professional Fee Claims and U.S. Trustee Fees), DIP Claims, and Priority Tax Claims are not classified and not entitled to vote on the Plan.

1. *Administrative Claims*

Except with respect to Professional Fee Claims, unless the Holder of an Allowed Administrative Claim agrees to less favorable treatment of such Claim, on or as soon as reasonably practicable after the later of (a) the Effective Date, (b) the date on which an Administrative Claim becomes an Allowed Administrative Claim, or (c) the date on which an Allowed Administrative Claim becomes payable under any agreement relating thereto, each Holder of an Allowed Administrative Claim shall receive, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, such Allowed Administrative Claim, Cash equal to the unpaid portion of such Allowed Administrative Claim.

To the extent not already asserted in the Chapter 11 Cases pursuant to a timely filed Proof of Claim in accordance with the Bar Date Order, all requests for allowance and payment of Administrative Claims (other than (i) Professional Fee Claims (such claims are subject to the Professional Fee Claims Bar Date), (ii) Claims asserted under section 503(b)(9) of the Bankruptcy Code (such Claims are subject to the General Bar Date), (iii) U.S. Trustee Fees, (vi) Administrative Claims that have been Allowed on or before the Effective Date, and (v) Administrative Claims that were already asserted in the Chapter 11 Cases pursuant to a timely Proof of Claim in accordance with the Bar Date Order), must be filed and served on the Debtors and the Plan Proponents, or, after the Effective Date, Reorganized Holdings, and their counsel, so as to actually be received on or before the Administrative Claims Bar Date. The notice of the occurrence of the Effective Date shall set forth the Administrative Claims Bar Date and shall constitute notice thereof. For the avoidance of doubt, Holders of Administrative Claims based on liabilities incurred by the Debtors in the ordinary course of business after the Petition Date must file and serve a request for payment of such Administrative Claim by the applicable Administrative Claims Bar Date.

After notice and a hearing, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, a Final Order.

Holders of Administrative Claims (other than (i) Professional Fee Claims, (ii) Claims asserted under section 503(b)(9) of the Bankruptcy Code), (iii) U.S. Trustee Fees, (iv) Administrative Claims that have been Allowed on or before the Effective Date, and (v) Administrative Claims that were already asserted in the Chapter 11 Cases pursuant to a timely filed Proof of Claim in accordance with the Bar Date Order), that do not file and serve a request for allowance and payment of an Administrative Claim by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting Administrative Claims against the Debtors, Reorganized Holdings, the Estates, or their assets and properties, and any Administrative Claims shall be deemed disallowed as of the Effective Date without the need for any notices, objection, or other action from the Debtors or Reorganized Holdings, as applicable, or any action or approval of the Bankruptcy Court.

2. *DIP Claims*

All DIP Claims (if any) shall be deemed Allowed as of the Effective Date in an amount equal to the aggregate amount of the DIP Facility obligations approved by the Bankruptcy Court, including, (i) the principal amount outstanding under the DIP Facility on such date, (ii) all interest accrued and unpaid thereon through and including the date of payment, and (iii) all accrued fees, expenses, and indemnification obligations (if any) payable under the DIP Documents.

On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent a Holder of an Allowed DIP Claim agrees to a less favorable treatment of such Claim, each Holder of an Allowed DIP Claim shall receive, in full and final satisfaction, compromise, settlement, release and discharge of, and in exchange for such Allowed DIP Claim Cash equal to the unpaid portion of such Allowed DIP Claim.

Contemporaneously with the foregoing treatment, the DIP Facility and DIP Documents shall be deemed terminated without further action by the DIP Agent or the DIP Lenders. The DIP Agent and DIP Lenders shall take all actions to effectuate and confirm such termination as reasonably requested by the Plan Proponents or Reorganized Holdings, as applicable.

3. *U.S. Trustee Fees*

All U.S. Trustee Fees payable after the Effective Date, if any, shall be paid by Reorganized Holdings until the closing of the Chapter 11 Cases pursuant to section 350(a) of the Bankruptcy Code.

4. *Priority Tax Claims*

Unless the Holder of an Allowed Priority Tax Claim agrees to less favorable treatment of such Claim, each Holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Allowed Priority Tax Claims, either (a) payment in full in

Cash, on or as soon as reasonably practicable after the latest of (i) the Effective Date, (ii) the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, and (iii) the date such Allowed Priority Tax Claim becomes payable under applicable non-bankruptcy law, (b) upon such other terms as agreed between the Plan Proponents and each Holder of such Allowed Priority Tax Claim, or (c) over a period ending not later than five (5) years after the Petition Date consistent with section 1129(a)(9)(C) of the Bankruptcy Code.

5. *Professional Fee Claims*

All applications for allowance and payment of Professional Fee Claims by Professionals for services rendered and reimbursement of expenses incurred prior to the Effective Date must be filed on or before the Professional Fee Claims Bar Date. If an application for a Professional Fee Claim is not filed by the Professional Fee Claims Bar Date, such Professional Fee Claim shall be deemed waived, and the Holder of such Claim shall be forever barred from receiving payment on account thereof. The notice of the occurrence of the Effective Date shall set forth the Professional Fee Claims Bar Date and shall constitute notice thereof. Objections to any Professional Fee Claims must be filed and served on Reorganized Holdings, the Plan Proponents, and the requesting Professional, no later than twenty-one (21) days after service of the applicable final application for allowance and payment of Professional Fee Claims.

Unless otherwise agreed to (1) by the Plan Proponent and the Professional prior to the Effective Date or (2) by Reorganized Holdings and the Professional after the Effective Date, the amount of Professional Fee Claims owing to such Professional that are Allowed by Final Order shall be paid in full in Cash by Reorganized Holdings as soon as reasonably practicable after its Professional Fee Claims are Allowed by order of the Bankruptcy Court, (x) *first*, by application of any retainer monies held by such Professional, and (y) *second*, once such retainer balance is exhausted, Reorganized Holdings shall pay such Professional the remaining balance of its Allowed Professional Fee Claim in Cash.

6. *Post-Effective Date Fees and Expenses*

On the Effective Date, the retention, including all rights and duties arising from, or related to, the Chapter 11 Cases, of each of the Debtors' retained professionals shall terminate; *provided*, *however*, that the Debtors' retained professionals may file fee applications in accordance with the Plan and Confirmation Order by the Professional Fee Claims Bar Date.

B. Classification and Treatment of Claims

The following table summarizes the classification and treatment of all Claims against the Debtors under the Plan.

Class and Estimated Amount	Summary of Treatment	Estimated Recovery	Entitled to Vote
Other Priority Claims[24] **(Class 1)** **(Amount $0)**	Unless the Holder of an Allowed Other Priority Claim agrees to less favorable treatment of such Claim, each Holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Allowed Other Priority Claim, at the option of the Plan Proponents or Reorganized Holdings, as applicable, Cash in an amount equal to the Allowed amount of such Allowed Other Priority Claim as soon as reasonably practicable after the latest of (1) the Effective Date, (2) the date that such Claim becomes an Allowed Other Priority Claim, and (3) a date agreed to by the Plan Proponents or Reorganized Holdings, as applicable, and the Holder of such Allowed Other Priority Claim.	100% Unimpaired	No (Deemed to Accept)
Secured Claims[25] **(Class 2)** **(Amount TBD)**	Unless the Holder of an Allowed Secured Claim agrees to less favorable treatment of such Claim, each Holder of an Allowed Secured Claim shall receive, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Allowed Secured Claim, at the option of the Plan Proponents or Reorganized Holdings, as applicable, (1) Cash in an amount equal to the Allowed amount of such Allowed Secured Claim as soon as reasonably practicable after the latest of (A) the Effective Date, (B) the date that such Claim becomes an Allowed Secured Claim, and (C) a date agreed to by the Plan Proponents or Reorganized Holdings, as applicable, and the Holder of such Secured Claim; (2) reinstatement of such Allowed Secured Claim; (3) the collateral securing such Holder's Allowed Secured Claim, with any deficiency to result in an Allowed General Unsecured Claim; or (4) such other treatment rendering such Allowed Secured Claim Unimpaired.	100% Unimpaired	No (Deemed to Accept)

[24] *Other Priority Claim* means any Claim against any Debtor accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than an Administrative Claim, DIP Claim, or Priority Tax Claim.

[25] *Secured Claim* means a Claim against a Debtor (other than an Administrative Claim, DIP Claim, Priority Tax Claim, Other Priority Claim, OCM Guaranty Claim, Subordinated Claim, or Intercompany Claim), that is secured by a Lien on property in which a Debtor's Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder's interest in the applicable Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) or 1129(b) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code.

Class and Estimated Amount	Summary of Treatment	Estimated Recovery	Entitled to Vote
General Unsecured Claims[26] **(Class 3)** **(Amount $505 million to $768 million)**	Unless the Holder of an Allowed General Unsecured Claim agrees to less favorable treatment of such Claim, each Holder of an Allowed General Unsecured Claim shall receive on the Effective Date or as soon as practicable thereafter, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Allowed General Unsecured Claim, the following (1) and (2): (1) at such Holder's election, either a. Equity Option: if such General Unsecured Claimholder makes a written election on a timely and properly delivered and completed Ballot or other writing satisfactory to the Plan Proponents, its Pro Rata Share of 25% of the Reorganized Equity (subject to dilution on account of the Backstop Premium and the EIP); or b. Cash Option: its Pro Rata Share, among General Unsecured Claims, of the GUC Cash Pool; *provided*, for the avoidance of doubt, the Pro Rata Share calculation in this subclause (B) shall be calculated based on the aggregate amount of all Allowed General Unsecured Claims whether or not Holders of such Claims receive the treatment in this subclause (B); *provided*, if a General Unsecured Claimholder does not submit a Ballot or submits a Ballot but fails to affirmatively elect the treatment set forth in Section 3.3(c)(iii)(1)(A) of the Plan, such General Unsecured Claimholder shall be deemed to have elected the treatment specified in Section 3.3(c)(iii)(1)(B) of the Plan with respect to its Allowed General Unsecured Claim; and (2) Rights Offering: its Pro Rata Share of the Rights Offering Subscription Rights (subject to dilution on account of the Backstop Premium and the EIP), to purchase the Reorganized Equity to be issued pursuant to the Rights Offering to the extent such General Unsecured Claimholder elects to exercise its Rights Offering Subscription Rights.	1.8-2.7% (Cash Out) 1.9-8.32% (Equity, excluding rights exercise) 2.9% -12.7% (Equity including rights exercise)[27] Impaired	Yes

Class and Estimated Amount	Summary of Treatment	Estimated Recovery	Entitled to Vote
Convenience Claims[28] **(Class 4)** **(Amount TBD)**	On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed Convenience Claim agrees to less favorable treatment of such Claim, each Holder of an Allowed Convenience Claim shall receive, in full and final satisfaction, compromise, settlement, release and discharge of and in exchange for such Allowed Convenience Claim, Cash in an amount equal to 15% of the face amount of such Holder's Allowed Convenience Claim; *provided*, the aggregate distributions to Holders of Convenience Claims shall not exceed the Convenience Claim Cap; *provided*, *further*, that in the event the aggregate distributions to Holders of Convenience Claims exceeds the Convenience Claim Cap, Holders of such Claims shall receive their Pro Rata Share of the Convenience Claim Cap.	15%[29] Impaired	Yes

[26] *General Unsecured Claim* means any Claim against any Debtor, but excluding any Administrative Claims, DIP Claims, Professional Fee Claims, U.S. Trustee Fees, Priority Tax Claims, Other Priority Claims, Convenience Claims, OCM Guaranty Claims, Subordinated Claims, or Intercompany Claims, as of the Petition Date that is neither secured by collateral nor entitled to priority under the Bankruptcy Code or any Final Order of the Bankruptcy Court. For the avoidance of doubt, any General Unsecured Claims (including, for the avoidance of doubt, 2022 Notes Claim and Old Notes Claims) that exceed the Convenience Claim Threshold Amount is a "General Unsecured Claim," unless, pursuant to Section 3.3(d)(i) of the Plan,~~)~~, such Holder irrevocably elects to have its General Unsecured Claim treated as a Convenience Claim on its Ballot.

[27] The Valuation Analysis attached hereto as **Appendix E** estimates plan equity value ranging from $55.8 million (low) to $68.3 million (high) with a midpoint of $62.1 million. The 8% Backstop Premium is calculated on the basis of the equity value plus the maximum Rights Offering Amount minus Administrative Claims, Convenience Claims, and the Cash Out option. The Plan cash is set at $5 million in all scenarios with the excess cash being returned to the Rights Offering participants. After the allocation of the Backstop Premium, the remaining equity value is split between the Reorganized Equity to General Unsecured Claimholders under the Plan (25%) and the Rights Offering participants (75%).

[28] *Convenience Claim* means any Allowed General Unsecured Claim against the Debtors in an amount that is greater than $0 but less than or equal to the Convenience Claim Threshold Amount; *provided*, that Holders of Allowed General Unsecured Claims (including, for the avoidance of doubt, 2022 Notes Claims and Old Notes Claims) exceeding the Convenience Claim Threshold Amount may irrevocably elect on their Ballot to have their General Unsecured Claim reduced to the Convenience Class Threshold Amount and treated as Convenience Claims.

[29] Estimated recoveries for Holders of Allowed Convenience Claims will be less than 15% if more than $16,666,667 in Claims elect to have their General Unsecured Claim reduced to the Convenience Class Threshold Amount and treated as Convenience Claims.

Class and Estimated Amount	Summary of Treatment	Estimated Recovery	Entitled to Vote
OCM Guaranty Claims[30] **(Class 5)** **(Amount N/A)**	On the Effective Date, all OCM Guaranty Claims shall be Reinstated and such Holder's claims shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.	N/A Unimpaired	No (Deemed to Accept)
Subordinated Claims[31] **(Class 6)** **(Amount TBD)**	On the Effective Date, each Allowed Subordinated Claim shall be cancelled, discharged, and released, without any distribution to Holders.	0% Impaired	No (Deemed to Reject)
Intercompany Claims[32] **(Class 7)** **(Amount N/A)**	On the Effective Date, each Allowed Intercompany Claim shall either be Reinstated or discharged, cancelled, released, and extinguished, without any distributions to Holders, as determined by the Plan Proponents or Reorganized Holdings, as applicable.	N/A Impaired / Unimpaired	No (Deemed to Accept /Reject)
Intercompany Interests[33] **(Class 8)** **(Amount N/A)**	On the Effective Date, each Allowed Intercompany Interest shall be either be Reinstated or discharged, cancelled, released, and extinguished, without any distributions to Holders, as determined by the Plan Proponents or Reorganized Holdings, as applicable.	N/A Impaired / Unimpaired	No (Deemed to Accept / Reject)

[30] *OCM Guaranty Claim* means any Claim arising from or related to the guarantees executed by Eletson Holdings in favor of the obligations of each of: Fourni Special Maritime Enterprises; Kastos Special Maritime Enterprises; Kimolos II Special Maritime Enterprise; Kinaros Special Maritime Enterprise; OCM Maritime Rhine LLC; OCM Maritime Yukon LLC; OCM Maritime Autumn LLC; and OCM Maritime Thames LLC.

[31] *Subordinated Claim* means collectively, Section 510(b) Claims and Eletson Insider Claims.

[32] *Intercompany Claim* means any and all Claims of a Debtor against another Debtor or non-Debtor Affiliate.

[33] *Intercompany Interest* means an Interest in a Debtor held by another Debtor; *provided*, for the avoidance of doubt, Parent Equity Interests are not Intercompany Interests.

Class and Estimated Amount	Summary of Treatment	Estimated Recovery	Entitled to Vote
Existing Equity Interests[34] **(Class 9)**	On the Effective Date, each Allowed Existing Equity Interest shall be discharged, cancelled, released, and extinguished, without any distributions to Holders.	0% Impaired	No (Deemed to Reject)

C. Other Miscellaneous Plan Provisions

The Plan contains various provisions relating to:

- the means for implementing the Plan, and operations and governance of the Debtors after the Effective Date (*see* Article V;)
- procedures for making distributions from the Debtors and Reorganized Holdings and the rights and powers of any Disbursing Agent (*see* Article VI);
- procedures for the reconciliation of Claims and Proofs of Claim and related matters, such as objections and estimation for any Disputed Claims (*see* Article VII);
- the treatment of executory contracts and unexpired leases (*see* Article VIII);
- conditions precedent to consummation of the Plan (*see* Article IX);
- the effect of confirmation (including the injunction and exculpation provisions (as explained in greater detail below)) (*see* Article X); and
- miscellaneous other implementation and effectuating provisions, including the retention of the Bankruptcy Court's jurisdiction with respect to certain issues (*see* Articles XI, XII).

D. Certain Matters Relating to the Old Notes and the 2022 Notes

The Plan contains certain provisions in Section 5.4 of the Plan (titled "Cancellation of Existing Securities and Agreements") that impacts distributions to

[34] *Existing Equity Interest* means 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.

Holders of Old Notes Claims and 2022 Notes Claims. Among other things, Section 5.4 of the Plan provides that:

> [T]he 2022 Notes Documents and the Old Notes Documents shall continue in effect solely for the purposes of (a) allowing the applicable Holders of Claims to receive their respective distributions under this Plan as provided herein, (b) allowing the Indenture Trustees to facilitate the distributions under this Plan to the applicable Holders of Claims as provided herein and otherwise comply with any obligations they may have under this Plan, including the cancellation of existing security interests pursuant to this Section 5.4, (c) allowing the Indenture Trustees to preserve their respective rights to payment of fees, expenses, and indemnification obligations as against any money or property distributable to the relevant Holder of 2022 Notes Claims and Old Notes Claims, as applicable, under this Plan, and to deduct such fees and expenses from such distributions, including in respect of payment and the right to exercise their charging liens, if any, against such distributions, (d) permitting the Indenture Trustees to perform any functions that are necessary to effectuate the foregoing, and (e) allowing the Indenture Trustees to assert any other right, privilege, benefit, or protection granted to either of them under the relevant documentation other than against Reorganized Holdings and the Exculpated Parties; *provided*, that the foregoing shall not affect the discharge of the Debtors with respect to the 2022 Notes Claims and the Old Notes Claims as provided for herein, or result in any expenses or liability to Reorganized Holdings, except to the extent set forth in or provided for under this Plan. Notwithstanding anything to the contrary herein, the terms and provisions of this Plan shall not alter, modify, or amend any existing contract or agreement between any of the Indenture Trustees and any current or former 2022 Noteholder or Old Noteholder, as applicable, and any such contract or agreement shall remain in full force and effect according to its terms following the Effective Date.

Plan § 5.4.

In broad strokes, Section 5.4 of the Plan affirms the ability of the Old Notes Trustee and the 2022 Notes Trustee to exercise their respective "charging lien" to recover from noteholders' distributions under the Plan amounts necessary to satisfy the Old Notes Trustee's and 2022 Notes Trustee's fees and expenses related to their respective indentures. Such amounts will reduce noteholders' recoveries under the Plan on a pro rata basis and are expected to be approximately (a) in the case of the Old Notes Trustee, approximately $400,000, and (b) in the case of the 2022 Notes Trustee, between approximately $3,000,000 and $4,000,000. To the extent that any noteholders have paid the Old Notes Trustee's and/or 2022 Notes Trustee's fees and expenses prior to the Effective Date, such fees and expenses will be reimbursed in accordance with any agreements between such noteholder(s) and the Old Notes Trustee and/or 2022 Notes Trustee.

E. New Board of Reorganized Holdings

The Plan contains the following provision regarding the New Board of Reorganized Holdings.

The New Board shall consist of three directors: (i) one director selected by the Plan Proponents, (ii) one director selected by the Plan Proponents, subject to consent of the Creditors' Committee (not to be unreasonably withheld, conditioned, or delayed), and (iii) one director designated as "independent" selected by the Creditors' Committee (the "Independent Director"). The identities of directors on the New Board shall be set forth in the Plan Supplement, to the extent known at the time of filing, in accordance with 11 U.S.C. § 1129(a)(5).

The New Corporate Governance Documents will (i) prohibit the issuance of non-voting equity securities, to the extent required under section 1123(a)(6) of the Bankruptcy Code, and (ii) provide that any decisions related to claims and causes of action with Levona Holdings, Ltd. and its affiliates, including Pach Shemen (the "*Levona Claims*") are required to be made by the independent director; *provided*, that if the New Board disagrees with any of the decisions of the Independent Director with respect to the Levona Claims, the New Board can refer the dispute to a final offer arbitrator (also known as a baseball arbitrator) or an early neutral evaluator—in each case, governed by the International Centre for Dispute Resolution and the American Arbitration Association—to decide; *provided*, *further*, the majority of Reorganized Holdings' shareholders other than Pach Shemen (including, any Reorganized Holdings' shareholders affiliated with Pach Shemen) may settle the Levona Claims or direct the actions of the independent director with respect to the Levona Claims. The costs of any such arbitrations or evaluations shall be borne by Reorganized Holdings.

The members of the governing body of each Debtor prior to the Effective Date, in their capacities as such, shall have no continuing obligations to Reorganized Holdings on or after the Effective Date and each such member will be deemed to have resigned or shall otherwise cease to be a director or manager of the applicable Debtor on the Effective Date. Commencing on the Effective Date, each of the directors of Reorganized Holdings shall serve pursuant to the terms of the New Corporate Governance Documents and may be replaced or removed in accordance with such organizational documents.

F. Backstop Commitment and Rights Offering

1. *Backstop Agreement*

Under the terms of the Backstop Agreement: (a) on the Effective Date, the Initial Backstop Party has agreed to purchase all of the Reorganized Equity offered and not duly subscribed for and/or purchased in the Rights Offering in accordance with the Rights Offering Procedures; and (b) the Backstop Parties will receive the Backstop Premium, which will be immediately and automatically deemed fully earned upon entry into the Backstop Agreement and payable upon the Effective Date. The Initial Backstop Party's financial wherewithal to make the backstop commitment, as well as a commitment letter, is attached hereto as **Appendix F**.

In accordance with the Backstop Agreement and the Plan, any General Unsecured Claimholder that is eligible to purchase the Reorganized Equity pursuant to Section 5.9(b) of the Plan and desires to participate in the Backstop Agreement, that delivers: (a) an executed election joinder in the form attached to the Backstop Agreement as Exhibit C, including certification of eligibility to purchase such Reorganized Equity; and (b) proof of funds or other financial wherewithal documentation, in each case, to counsel for the Petitioning Creditors at Togut, Segal & Segal LLP (Kyle J. Ortiz (kortiz@teamtogut.com) and Bryan M. Kotliar (bkotliar@teamtogut.com)), no later than ten (10) days following the Solicitation Commencement Deadline (as defined in the Rights Offering Approval Order) (any such General Unsecured Claimholder that complies with the foregoing, a "Subsequent Backstop Party" and together with the Initial Backstop Parties, the "Backstop Parties").

The offering, issuance, and distribution of the Reorganized Equity on account of the General Unsecured Claims and the Rights Offering shall be exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable U.S. state or other law requiring registration prior to the offering, issuance, distribution, or sale of securities in accordance with, and pursuant to, section 1145 of the Bankruptcy Code to the extent permitted or under the Securities Act by virtue of section 4(a)(2) thereof, Regulation D, and/or Regulation S. Such Reorganized Equity issued pursuant to section 1145 of the Bankruptcy Code will not be "restricted securities" as defined in Rule 144(a)(3) of the Securities Act and will be freely tradable and transferable by the initial recipients thereof, subject to the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 1145(b) of the Bankruptcy Code, and compliance with applicable securities laws, including Rule 144 of the Securities Act, and any rules and regulations of the SEC, if any, applicable at the time of any future transfer of such securities or instruments. To the extent the issuance and distribution of any Reorganized Equity is being made in reliance on the exemption from registration set forth in section 4(a)(2) of the Securities Act, Regulation D, and/or Regulation S promulgated under the Securities Act, and similar registration exemptions applicable outside of the United States, such securities will be considered "restricted securities" subject to resale restrictions and may be resold, exchanged, assigned, or otherwise transferred only pursuant to a registration statement or available exemption from the registration requirements of the Securities Act and other applicable law.

The issuance of the Reorganized Equity to the Backstop Parties, and the payment of the Backstop Premium is being made in reliance on the exemption from registration set forth in section 4(a)(2) of the Securities Act, Regulation D, and/or Regulation S promulgated under the Securities Act, and similar registration exemptions applicable outside of the United States, such securities will be considered "restricted securities" subject to resale restrictions and may be resold, exchanged, assigned, or otherwise transferred only pursuant to a registration statement or available exemption from the registration requirements of the Securities Act and other applicable law.

Any securities issued under the EIP will be issued pursuant to a registration statement or available exemption from registration under the Securities Act and other applicable law.

2. *Rights Offering Procedures*

On April 17, 2024, the Petitioning Creditors filed a motion [Docket No. 592] (the "Rights Offering Procedures Motion") seeking approval of procedures for conducting the Rights Offering.[35] On May 9, 2024, the Debtors filed an objection to the Rights Offering Procedures Motion, which the Petitioning Creditors replied to on May 13, 2024. *See* Docket Nos. 652 and 667. On [•] [•], 2024, the Bankruptcy Court entered an order approving the Rights Offering Procedures Motion [Docket No. [•]] (the "Rights Offering Approval Order"). The up to $43.5 million Rights Offering will be conducted in reliance upon the exemptions from registration under section 1145 of the Bankruptcy Code or Section 4(a)(2) of the Securities Act. All General Unsecured Claimholders (each, an "Applicable Claim") are entitled to receive their share of Rights Offering Subscription Rights to acquire up to 75% of the Reorganized Equity, at a price that represents an implied 10.8% discount to the mid-point of the plan equity value of up to US$62,058,088.00, in accordance with the Rights Offering Procedures, which shall be backstopped by the Backstop Parties.

Subject to the terms and conditions set forth in the Plan, the Rights Offering Procedures and the form to be used for exercising the Rights Offering Subscription Rights (the "Subscription Form"), each General Unsecured Claimholder of an Applicable Claim is entitled to subscribe for up to its Pro Rata Portion (as defined in the Rights Offering Procedures) of the Reorganized Equity to be issued pursuant to the Rights Offering at a purchase price of $4.85~~$[•]~~[36] per security (the "Purchase Price"). There will be no oversubscription rights in the Rights Offering. Any Reorganized Equity that is unsubscribed by General Unsecured Claimholders pursuant to the Rights Offering will not be offered to other General Unsecured Claimholders but will be purchased by the Backstop Parties in accordance with the Backstop Agreement. Subject to the terms and conditions of the Backstop Agreement, the Backstop Parties are obligated to purchase their Pro Rata Portion of the applicable Reorganized Equity pursuant to the Rights Offering.

Pursuant to the Rights Offering Procedures, the Rights Offering will commence three Business Days from the entry of the Rights Offering Approval Order (the "Subscription Commencement Date") and will end on August [5], ~~June [__],~~ 2024 at 4:00 p.m. prevailing Eastern Time (the "Subscription Expiration Date").

Pursuant to the Rights Offering Procedures, the Rights Offering Subscription Rights issued to Holders of Applicable Claims may not be detached or transferred separately from the corresponding Applicable Claim. Any attempted detachment of such Rights Offering Subscription Rights from the corresponding Applicable Claim by a General Unsecured Claimholder will be null and void, will have no effect, and will not be recognized for any purpose. The Applicable Claim and the

[35] Capitalized terms not otherwise defined in this section of this Disclosure Statement shall have the meanings ascribed to such terms in the Rights Offering Procedures Motion or the Rights Offering Approval Order, as applicable.

[36] Rounded to the nearest whole cent.

Rights Offering Subscription Rights will transfer together as a unit together with the underlying Applicable Claims with respect to which such Rights Offering Subscription Rights were issued, subject to such limitations, if any, that would be applicable to the transferability of the Applicable Claims.

Once a General Unsecured Claimholder has properly exercised its Rights Offering Subscription Rights, subject to the terms and conditions contained in the Rights Offering Procedures, such exercise will be revocable only upon written consent of the Plan Proponents and the Subscription Agent. Moreover, following the exercise of any Rights Offering Subscription Rights, the Holder thereof shall be prohibited from transferring or assigning the Applicable Claims, as applicable, corresponding to such Rights Offering Subscription Rights until the earlier of (i) the termination of the Rights Offering and (ii) the revocation of exercise of the Rights Offering Subscription Rights to the extent permitted by the Rights Offering Procedures.

To exercise the Rights Offering Subscription Rights, a General Unsecured Claimholder must: (i) return a duly executed Subscription Form (including the Certification, with an accompanying IRS Form W-9 or appropriate IRS Form W-8, as applicable) to the Subscription Agent, so that such documents are actually received by the Subscription Agent by the Subscription Expiration Deadline; (ii) if the General Unsecured Claimholder is not one of the Backstop Parties, at the same time it returns its Subscription Form to the Subscription Agent, but in no event later than the Subscription Expiration Deadline, pay the applicable Purchase Payment Amount to the Subscription Agent by wire transfer **ONLY** of immediately available funds in accordance with the instructions included in the Subscription Form; and (iii) if the General Unsecured Claimholder is one of the Backstop Parties, at the same time it returns its Subscription Form to the Subscription Agent, but in no event later than the Funding Date, pay the applicable Purchase Payment Amount to the Escrow Account.

G. Proposed Substantive Consolidation

Substantive consolidation is an equitable legal doctrine under which a bankruptcy court may treat separate, individual debtors as if they were merged into a single debtor entity and vested with the cumulative assets and liabilities of the debtor estates. The result of substantive consolidation is that claims asserted by creditors against multiple debtors are converted into claims against the surviving consolidated debtor entity.

In determining whether to order substantive consolidation, courts in the Second Circuit consider whether (i) "creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit" or (ii) "the affairs of the debtors are so entangled that consolidation will benefit all creditors." *In re Augie/Restivo Baking Co., Ltd.*, 860 F.2d 515, 518 (2d Cir. 1988). Satisfaction of either prong will support substantive consolidation. *In re Extended Stay, Inc.*, No. 09-13764-JLG, 2020 WL 10762310, at *42 (Bankr. S.D.N.Y. Aug. 8, 2020). However, courts have cautioned that it is a remedy that is to be applied "sparingly." *Id.*

The first *Augie/Restivo* prong is "applied from the creditors' perspective" and the inquiry ''is whether creditors treated the [subject entities] as a single entity, not

whether the managers of the [entities] themselves, or consumers, viewed the [entities] as one enterprise." *Id.* at *43.

The second *Augie/Restivo* prong concerns both financial and operational entanglement between the subject entities, but the prong is only satisfied where the entanglement and/or commingling is so pervasive that untangling would be either impossible or so difficult and costly that doing so would effectively extinguish assets such that the creditors will not benefit from consolidation. *See e.g.*, *In re Verestar, Inc.*, 343 B.R. 444, 463 (Bankr. S.D.N.Y. 2006) (denying consolidation of a non-debtor-parent-company who commingled funds and business operations with subsidiary-debtor, reasoning "there is no allegation that it is impossible to sort out the intercompany transfers or that the companies' respective rights to the cash cannot be traced"); *Extended Stay*, 2020 WL 10762310 at *53 (citing *In re WorldCom, Inc.*, No. 02-13533, 2003 WL 23861928, at *36 (Bankr. S.D.N.Y. Oct. 31, 2003) (explaining that substantive consolidation is appropriate when "it would be so costly and difficult to untangle the [d]ebtors' financial affairs, such that doing so is a 'practical impossibility,' " or "that it is not possible to create accurate financial data for each legal entity."); *In re Drexel Burnham Lambert Grp.*, Inc., 138 B.R. 723, 766 (Bankr. S.D.N.Y. 1992) (finding substantive consolidation appropriate where debtors operated as single enterprise and establishing allocation of liability "would be a Herculean task consuming years of costly professional services, thereby draining significant amounts of value from the [d]ebtors' estates")).

In evaluating whether to order substantive consolidation, courts consider (a) the presence or absence of consolidated financial statements, (b) the unity of interest and ownership between various corporate entities, (c) the existence of parent and intercompany guarantees on loans, (d) the degree of difficulty in segregating and ascertaining individual assets and liabilities, (e) the existence of transfers of assets without formal observation of corporate formalities, (f) the commingling of assets and business functions, and (g) the profitability of consolidation at a single location. *Augie/Restivo*, 860 F.2d at 518.

The Plan provides for limited substantive consolidation of the Debtors' estates for purposes of making distributions under the Plan. The Plan Proponents believe that consensual substantive consolidation provides the most equitable treatment as to the Debtors' creditors (which nearly entirely consist of claims against Debtor Eletson Holdings and not Debtors Eletson MI and Eletson Finance). Substantive consolidation maximizes the returns to creditors under the Plan and no creditors or other parties in interest are harmed by the limited substantive consolidation contemplated by the Plan.

H. Releases

The Plan does not provide for the release of Claims or Causes of Action belonging to the Debtors or their Estates or any third party Claims or Causes of Action held by third party non-Debtors. The Plan contains certain usual and customary discharge and injunction provisions consistent with the Bankruptcy Code and as part of implementing the restructuring set forth in the Plan, as well as certain exculpation provisions for the Plan Proponents, the Creditors' Committee (and its members), and

their respective Related Parties. Each of the foregoing are described in greater detail in Sections 10.3, 10.4, and 10.5 of the Plan and are set forth below.

1. *Discharge*

Pursuant to and to the fullest extent permitted by the Bankruptcy Code, except as otherwise specifically provided in the Plan or the Confirmation Order, the treatment of Claims and Interests under the Plan shall be in full and final satisfaction, compromise, settlement, release, discharge and termination, as of the Effective Date, of all Claims of any nature whatsoever, whether known or unknown, against, and Interests in, the Debtors, any property of the Estates, or any property of Reorganized Holdings, including all Claims of the kind specified in section 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not: (a) a Proof of Claim or Interest based upon such Claim, debt, right, or Interest is filed or deemed filed pursuant to section 501 of the Bankruptcy Code, (b) a Claim or Interest based upon such Claim, liability, obligation or Interest is Allowed pursuant to section 502 of the Bankruptcy Code, or (c) the Holder of such a Claim, liability, obligation or Interest has voted to accept the Plan. Except as otherwise provided herein, any default or "event of default" by the Debtors with respect to any Claim or Interest that existed immediately prior to or on account of the filing of these Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date.

2. *Injunction*

Except as otherwise specifically provided in the Plan or the Confirmation Order, all Persons or Entities who have held, hold or may hold (a) Claims or Interests that arose prior to the Effective Date, (b) Causes of Action that are subject to exculpation pursuant to Section 10.5 of the Plan (but only to the extent of the exculpation provided in Section 10.5 of the Plan), or (c) Claims, Interests or Causes of Action that are otherwise discharged, satisfied, stayed or terminated pursuant to the terms of the Plan and all other parties-in-interest seeking to enforce such Claims, Interests or Causes of Action are permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim (including a Subordinated Claim) against or Interest in the Debtors or Reorganized Holdings, or property of any Debtors or Reorganized Holdings, other than to enforce any right to a distribution pursuant to the Plan, (ii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Debtors or Reorganized Holdings or property of any Debtors or Reorganized Holdings with respect to any such Claim or Interest, other than to enforce any right to a distribution pursuant to the Plan, (iii) creating, perfecting or enforcing any Lien or encumbrance of any kind against the Debtors or Reorganized Holdings, or against the property or interests in property of the Debtors or Reorganized Holdings with respect to any such Claim or Interest, other than to enforce any right to a distribution pursuant to the Plan, or (iv) asserting any right of setoff (except for setoffs validly exercised prepetition) or subrogation of any kind against any obligation due from the Debtors or Reorganized Holdings, or against the property or interests in property of the Debtors or Reorganized Holdings, with respect to any such Claim or Interest. Such injunction shall extend to any successors or

assignees of the Debtors or Reorganized Holdings and its respective properties and interests in properties.

3. *Exculpation*

Effective as of the Effective Date, to the extent permitted under section 1125(e) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is exculpated from any Cause of Action related to any act or omission taking place between the Petition Date and the Effective Date, in connection with, relating to, or arising out of, the Chapter 11 Cases, the Involuntary Proceedings, the filing of the Involuntary Petitions, the formulation, preparation, dissemination, negotiation, or filing of the Plan, this Disclosure Statement, the Plan Supplement, the Rights Offering Procedures, the Backstop Agreement, or any transaction under the Plan, contract, instrument, or document or transaction approved by the Bankruptcy Court in these Chapter 11 Cases, except for (a) any Cause of Action related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted fraud, willful misconduct, or gross negligence of such Person, and (b) any Cause of Action related to any liability of professionals to their clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8 Rule 1.8(h)(1); *provided*, *however*, *that*, for the avoidance of doubt, any such exculpation shall not act or be construed to exculpate, channel, release, enjoin, or otherwise affect any civil or criminal enforcement action by a Governmental Unit.

V. BEST INTERESTS OF CREDITORS

Section 1129(a)(7) of the Bankruptcy Code requires that any holder of an impaired claim or interest voting against a proposed plan of reorganization must be provided in the plan with a value, as of the effective date of the plan, at least equal to the value that the holder would receive if the debtors' assets were liquidated under chapter 7 of the Bankruptcy Code. To determine what holders of claims and interests in each impaired class would receive if the debtors' assets were liquidated, the Bankruptcy Court must determine the dollar amount that would be generated from a liquidation of the debtors' assets in the context of a hypothetical liquidation. Such a determination must take into account the fact that secured claims, and any administrative claims resulting from the original chapter 11 cases and from the chapter 7 cases, would have to be paid in full from the liquidation proceeds before the balance of those proceeds were made available to pay unsecured creditors and make distributions (if any) to holders of interests.

In support of the Plan Proponents' belief that Holders of Claims in each impaired Class will receive more under the Plan than if the Debtors' assets were liquidated, attached to this Disclosure Statement as **Appendix C** is a liquidation analysis (the "Liquidation Analysis") prepared by Batuta Capital Advisors LLC ("Batuta") at the direction of the Plan Proponents. The Liquidation Analysis assumes that the Chapter 11 Cases were converted to chapter 7 cases and that each Debtors' assets are liquidated under the direction of a chapter 7 trustee.

The assumptions used in developing the Liquidation Analysis are inherently subject to significant uncertainties and contingencies. Accordingly, there can be no assurances that the values assumed in the Liquidation Analysis would be realized if the Debtors were actually liquidated. In addition, any liquidation would take place in the future at which time circumstances may exist that cannot presently be predicted. A description of the procedures followed and the assumptions and qualifications made by the Plan Proponents in connection with the Liquidation Analysis are set forth in the notes thereto.

THESE LIQUIDATION VALUES HAVE BEEN PREPARED SOLELY FOR USE IN THIS DISCLOSURE STATEMENT AND DO NOT REPRESENT VALUES THAT ARE APPROPRIATE FOR ANY OTHER PURPOSE. NOTHING CONTAINED IN THE LIQUIDATION ANALYSIS IS INTENDED TO BE OR CONSTITUTES A CONCESSION BY OR ADMISSION OF ANY DEBTOR FOR ANY PURPOSE.

VI. VALUATION AND FINANCIAL PROJECTIONS

A. Feasibility

In connection with confirmation of the Plan, the Bankruptcy Court must determine that the Plan is feasible in accordance with section 1129(a)(11) of the Bankruptcy Code (which section requires that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors). To support the Plan Proponents' belief that the Plan is feasible, Batuta has prepared the projections for Reorganized Holdings, as set forth in **Appendix D** (the "Financial Projections"). The Plan provides Reorganized Holdings with a substantial infusion of capital from the proceeds of the Rights Offering. This capital will allow the Debtors to emerge from bankruptcy upon the Effective Date of the Plan and satisfy Allowed Claims as provided for in the Plan. Accordingly, the Plan Proponents believe that all Plan obligations will be satisfied without the need for further reorganization of the Debtors.

B. Valuation

In connection with developing the Plan, Batuta~~Batata~~ performed an analysis of the estimated value of Reorganized Holdings, which is set forth in the valuation analysis in **Appendix E** (the "Valuation Analysis"). The Valuation Analysis is based on commonly accepted valuation methodologies.

The Valuation Analysis is based upon a number of estimates and assumptions that are inherently subject to significant uncertainties and contingencies beyond the control of the Plan Proponents and Reorganized Holdings. Accordingly, there can be no assurance that the ranges reflected in the Valuation Analysis would be realized if the Plan were to become effective, and actual results could vary.

THE VALUATION ANALYSIS REPRESENTS A HYPOTHETICAL VALUATION OF REORGANIZED HOLDINGS AND ITS ASSETS, WHICH ASSUMES THAT REORGANIZED HOLDINGS CONTINUES AS AN OPERATING BUSINESS. THE ESTIMATED VALUE SET FORTH IN THE VALUATION ANALYSIS DOES NOT

PURPORT TO CONSTITUTE AN APPRAISAL OR NECESSARILY REFLECT THE ACTUAL MARKET VALUE THAT MIGHT BE REALIZED THROUGH A SALE OR LIQUIDATION OF REORGANIZED HOLDINGS, ITS SECURITIES OR ITS ASSETS, WHICH MAY BE MATERIALLY DIFFERENT THAN THE ESTIMATES SET FORTH IN THE VALUATION ANALYSIS.

VII. SOLICITATION PROCEDURES AND DEADLINES

A. Solicitation Packages

The Plan Proponents and the Debtors are causing solicitation packagespackage (the "Solicitation Packages") to be distributed to Holders of Claims entitled to vote on the Plan, the Debtors' Plan, and the PC Alternative Plan (together, the "Competing Plans"). Such Solicitation Packages include:

- a joint cover lettersheet from the Plan Proponents and the Debtors describing the contents of such Solicitation Package;
- a letter from the Creditors' Committee providing its recommendations on the Competing Plans;
- a notice of the hearing before the Court to consider confirmation of the Competing Plansconfirm the Plan (the "Confirmation Hearing Notice");
- this Disclosure Statement together with the disclosure statements for the Competing Plans (the "Disclosure Statements"), with each of the three Competing PlansPlan annexed thereto;
- the *Order (I) Approving Disclosure Statements, (II) Approving*order of the Bankruptcy Court approving the Petitioning Creditors' *Solicitation and Notice Procedures with Respect to Confirmation of Competing Plans, (III) Approving Forms of Various Ballots and Notices in Connection Therewith, (IV) Approving Scheduling of Certain Key Dates in Connection with Confirmation, and (V) Granting Related Relief* [Docket No. [ ]] (the "Disclosure Statement Order"),Motion, entered on [•] [•], 2024, [Docket No. [•]] (the "Solicitation Approval Order"), excluding the exhibits attached thereto, approving the procedures for soliciting votes with respect to the Competing PlansPlan and dates and deadlines related to the Bankruptcy Court's approval of the Competing PlansPlan (referred to as "Confirmation");
- a ballot to cast a vote on the Competing PlansPlan (each, a "Ballot"); and
- such other solicitation materials that the Bankruptcy Court may direct (such as materials related to the rights offering, as applicable).[37]

Holders of Claims not entitled to vote on the Competing PlansPlan (the

[37] Instructions on how to vote are included with the Solicitation Package and are described below.

"Non-Voting Classes") will receive only the Confirmation Hearing Notice, which will provide them notice of such Holder's non-voting status.

Copies of the this Disclosure Statements Statement, the Competing Plans Plan, all appendices and exhibits attached thereto and hereto, and all other pleadings filed and orders entered in these Chapter 11 Cases can be obtained by contacting the Voting Agent (a) in writing at Eletson Holdings Inc., et al., Ballot Processing Center c/o KCC dba Verita, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245, (b) via email at EletsonBallots@kccllc.com, https://www.kccllc.net/Eletson/inquiry, or (c) by telephone at 888-647-1737 (Domestic) or 310-751-2624 (International).

B. Voting Procedures and Voting Deadline

The rules, requirements, and procedures regarding the submission of your Ballot are set forth in the Disclosure Statement Solicitation Approval Order and the Ballot and are summarized below for your convenience.

After carefully reviewing the Competing Plans, the Plan, this Disclosure Statements Statement, and the detailed instructions accompanying your Ballot, (a) you may choose to accept and / or reject more than one Competing Plan; and (b) you may please indicate your preference among acceptance or rejection of the Plan by voting in favor of (*i.e.*, to accept) or against the Competing Plans that you have accepted Plan (*i.e.*, to reject) on your the Ballot or that you have been deemed to accept.

To be counted, your Ballot must be duly completed, executed, and **actually received** by 5:00 p.m. (prevailing Eastern Time) on [August] [5], [_____] [__], 2024 (the "Voting Deadline"). Ballots may be delivered either via regular mail, courier, or delivery services or email to the Voting Agent at the at the following address: Eletson Holdings Holidngs Inc., *et al.*, Ballot Processing Center c/o KCC dba Verita, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245, email: EletsonBallots@kccllc.com.

Where applicable, ballots can be submitted via the Voting Agent's e-ballot platform by visiting https://www.kccllc.net/Eletson, clicking on the "Submit E-Ballot" section of the website and following the directions to submit their electronic Ballot.

If you are a Beneficial Holder of Claims in Class 3 and received a Ballot for Beneficial Holders (a "Beneficial Holder Ballot"), you must complete and return the Beneficial Holder Ballot to your broker, commercial bank, transfer agent, trust company, dealer, or other intermediary or nominee, or their mailing agent (each a "Nominee") so that it is received by your Nominee in sufficient time for your Nominee to submit a master ballot prior to the Voting Deadline.

Ballots received after the Voting Deadline will not be counted (or such other deadline as ordered by the Debtors or the Plan Proponents except as expressly provided in the Disclosure Statement Order or in the event that the Voting Deadline is extended by the Debtors or the Plan Proponents and subject to any contrary order of the Bankruptcy Court or agreed to by the Plan Proponents, in their sole discretion) will not

~~be counted~~.

If you have any questions about how to vote, the Solicitation Package you receive, or the amount of your claim, or if you wish to receive additional copies of the Competing Plans, the~~Plan, this~~ Disclosure Statements~~Statement~~, or any exhibits or appendices thereto or hereto, please contact the Voting Agent at: 888-647-1737 (Domestic) or 310-751-2624 (International) or via email at EletsonBallots@~~https://www.~~kccllc.com. ~~net/eletson/inquiry.~~

C. Confirmation Hearing and Deadline for Objections to Plan Confirmation

The Plan Proponents intend to seek the Bankruptcy Court's Confirmation of the Plan. The Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan for **[•], 2024 at [•] a.m. / p.m. (prevailing Eastern Time) (the "Confirmation Hearing").** The Plan Proponents may adjourn the Confirmation Hearing by filing a notice on the docket of the Chapter 11 Cases or by announcing an adjournment on the record of a hearing or status conference held with the Bankruptcy Court.

Any objections to Confirmation of the Plan must be filed with the Bankruptcy Court and served on the parties indicated in the boxes immediately below by no later than 4:00~~[•] a.m. /~~ **p.m. (prevailing Eastern Time) on** August 28~~[•],~~ **2024 (the "Objection Deadline").** Unless an objection to Confirmation is timely filed and served, such objection may not be considered by the Bankruptcy Court at the Confirmation Hearing. Such objection must be filed with the Bankruptcy Court and served so that it is **actually received** by the Bankruptcy Court and the following persons by no later than the Objection Deadline:

Counsel for Petitioning Creditors	Togut, Segal & Segal LLP One Penn Plaza, Suite 3335 New York, New York 10119 Attn: Kyle J. Ortiz, Esq. (kortiz@teamtogut.com) and Bryan M. Kotliar, Esq. (bkotliar@teamtogut.com)
Counsel for the Creditors' Committee	Dechert LLP 1095 Avenue of Americas New York, NY 10036 Attn: Stephen Zide, Esq. (stephen.zide@dechert.com) and David Herman, Esq. (david.herman@dechert.com)
The U.S. Trustee	Office of the United States Trustee – NYO Department of Justice Alexander Hamilton Custom House One Bowling Green New York, NY 10004

	Attn: Daniel Rudewicz, Esq. (Daniel.Rudewicz@usdoj.gov)

VIII. RISK FACTORS TO BE CONSIDERED

HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN SHOULD READ AND CAREFULLY CONSIDER THE FOLLOWING FACTORS, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT AND THE PLAN (INCLUDING THEIR RESPECTIVE EXHIBITS / APPENDICES), BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. THIS INFORMATION, HOWEVER, DOES NOT DESCRIBE THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

The statements contained in this Disclosure Statement are made by the Plan Proponents as of the date hereof unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. The Plan Proponents have no duty to update this Disclosure Statement except as may be required by applicable law.

The Plan Proponents have relied upon information provided by the Debtors in connection with the preparation of this Disclosure Statement. Although the Plan Proponents have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not independently verified the information contained in this Disclosure Statement.

The contents of this Disclosure Statement should not be construed as legal, business, or tax advice, and nothing contained in the Plan will constitute an admission of, or be deemed evidence of, the tax or other legal effects of the Plan on the Plan Proponents or on Holders of Claims. Each Holder of a Claim should consult his, her, or its own legal counsel and accountant as to legal, tax, and other matters concerning his, her, or its Claim. This Disclosure Statement may not be relied upon for any purpose other than to determine whether to vote to accept the Plan.

A. Certain Bankruptcy Considerations

1. *Failure to Confirm the Plan*

If the Plan is not confirmed and consummated, there can be no assurance that the Chapter 11 Cases will continue rather than be converted to liquidation cases under chapter 7 of the Bankruptcy Code. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a plan and requires, among other things, that the value of distributions to dissenting creditors and shareholders not be less than the value of distributions such creditors and shareholders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

Although the Plan Proponents believe that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion or that

modifications of the Plan will not be required for confirmation or that such modifications would not necessitate resolicitation of votes.

2. *The Plan May Not be Accepted by Sufficient Holders of Impaired Claims*

The Plan is subject to a vote of Holders of Impaired Claims in voting Classes and to Confirmation by the Bankruptcy Court. Article VI hereof summarizes the numerous requirements for Confirmation of the Plan, including that the Plan must be accepted by at least one Class of Impaired Claims. The Plan Proponents represent the majority of the holders of the Notes Claims, and are expected to support and vote in favor of the Plan. However, until all votes are collected, there can be no assurance that the requisite acceptances to confirm the Plan will be obtained. Thus, while the Plan Proponents believe that the Plan is confirmable under the standards set forth in section 1129 of the Bankruptcy Code, there is no guarantee that the Plan will be accepted by the requisite Classes entitled to vote on the Plan.

3. *Uncertainty of Extraterritorial Recognition of Plan Confirmation*

The Debtors are incorporated in Liberia and some of their interests are governed by the laws of foreign jurisdictions other than the United States. Although the Plan Proponents will make every effort to ensure that any Confirmation Order entered by the Bankruptcy Court and the steps taken pursuant to the Confirmation Order to implement the Plan are recognized and are effective in all applicable jurisdictions, it is possible that if a creditor or stakeholder were to challenge the Plan, a foreign court may refuse to recognize the effect of the Confirmation Order.

4. *No Assurance of Ultimate Recoveries*

There can be no assurances of the actual recoveries to the Debtors' claimholders. The Plan Proponents cannot assure the Debtors' claimholders that they will be able to resell any consideration received in respect of their claims at current values or at all.

5. *Classification and Treatment of Claims and Interests*

Section 1122 of the Bankruptcy Code requires that the Plan classify Claims against the Debtors. The Bankruptcy Code also provides that, except for certain Claims classified for administrative convenience, the Plan may place a Claim in a particular Class only if such Claim is substantially similar to the other Claims of such Class. The Plan Proponents believe that all Claims have been appropriately classified in the Plan.

To the extent that the Bankruptcy Court finds that a different classification is required for the Plan to be confirmed, the Plan Proponents may seek to (a) modify the Plan to provide for whatever classification might be required for confirmation, and (b) use the acceptances received from any creditor pursuant to the solicitation for the purpose of obtaining the approval of the Class or Classes of which such creditor ultimately is deemed to be a member. There can be no assurance that the Bankruptcy

Court, after finding that a classification was inappropriate and requiring a reclassification, would approve the Plan based upon such reclassification without requiring the Plan Proponents to resolicit votes.

6. *Nonconsensual Confirmation*

In the event any impaired class of claims entitled to vote on a plan of reorganization does not accept a plan of reorganization, a bankruptcy court may nevertheless confirm such plan at the proponent's request if at least one impaired class has accepted the plan (with such acceptance being determined without including the vote of any "insider" in such class), and as to each impaired class that has not accepted the plan, the bankruptcy court determines that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired classes.

7. *Non-Occurrence of Effective Date*

Although the Plan Proponents believe that the Effective Date will occur reasonably soon after the Confirmation Date, there can be no assurance as to such timing or as to whether it will occur. Moreover, if the conditions precedent to the Effective Date of the Plan are not met, the Plan may be vacated by the Bankruptcy Court.

8. *Risks of Failure to Satisfy Conditions Precedent*

Article IX of the Plan provides for certain conditions that must be satisfied (or waived) prior to the Confirmation Date and for certain other conditions that must be satisfied (or waived) prior to the Effective Date. Some of the conditions are outside of the Plan Proponents' control. There can be no assurance that any or all of the conditions in the Plan will be satisfied (or waived). Accordingly, even if the Plan is confirmed by the Bankruptcy Court, there can be no assurance that the Plan will be consummated. If the Plan is not consummated, there can be no assurance that the Chapter 11 Cases would not be converted to chapter 7 liquidation cases or that any new chapter 11 plan would be as favorable to Holders of Claims as the current Plan. Either outcome may materially reduce distributions to Holders of Claims.

9. *Distributions to Holders of Allowed Claims Under the Plan*

Projected distributions are based upon good faith estimates of the total amount of Claims ultimately Allowed and the funds available for distribution. Both the actual amount of Allowed Claims in a particular Class and the funds available for distribution for such Class may differ from the Plan Proponents' estimates. If the total amount of Allowed Claims in a Class is higher than the Plan Proponents' estimates or the funds available for distribution to such Class are lower than the Plan Proponents' estimates, the percentage recovery to holders of Allowed Claims in such Class will be less than projected.

10. *Funding Necessary for the Consummation of the Plan*

The Plan Proponents contemplate that all Cash necessary for Reorganized Holdings to make payments required by the Plan and for post-Confirmation operations shall be obtained from (a) existing Cash held by Reorganized Holdings on the Effective Date, (b) proceeds from the Rights Offering, and (c) the operations of Reorganized Holdings. To the extent the Plan obligates any other Debtor entities to make any payments or Distributions or take any other action under the Plan, the amount of such payments or Distributions or the cost of taking such actions shall be funded solely by Reorganized Holdings.

11. *Future Litigation*

Given the litigious history of these Chapter 11 Cases, there is a risk that new litigation claims may be asserted against Reorganized Holdings or the Backstop Parties. Future litigation could result in material judgement(s) against Reorganized Holdings. Such litigation, and any judgement in connection therewith, could have a material negative effect on Reorganized Holdings.

12. *Conversion to Chapter 7*

If the Bankruptcy Court finds that it would be in the best interests of the Holders of Claims, the Bankruptcy Court may convert the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed or elected to liquidate the Debtors' assets for distribution in accordance with the priorities under the Bankruptcy Code. The Plan Proponents believe that liquidation under chapter 7 would result in significantly smaller distributions being made to creditors than those provided in a Chapter 11 plan because of (a) the likelihood that assets would have to be sold in a disorderly fashion over a short period of time, rather than reorganizing or selling the business as a going concern at a later time in a controlled manner, (b) additional administrative expenses involved in the appointment of a chapter 7 trustee, and (c) additional expenses and claims, including claims resulting from the rejection of certain executory contracts and unexpired leases in connection with the cessation of operations.

B. Risk of Variance in Financial Results

1. *Reorganized Holdings May Not Be Able to Achieve Their Anticipated Financial Results*

Actual financial results may differ materially from anticipated results. If Reorganized Holdings does not achieve projected revenue or cashflow levels, Reorganized Holdings may lack sufficient liquidity to continue operating their business consistent after the Effective Date.

2. *Projections are Subject to Inherent Uncertainty Due to the Numerous Assumptions Upon Which They Are Based*

Unanticipated events and circumstances occurring subsequent to the approval of this Disclosure Statement and/or Confirmation of the Plan by the Bankruptcy Court may affect the actual financial results of Reorganized Holdings' operations. Actual results achieved may vary from anticipated results.

C. Risks Related to Reorganized Equity Issued Under the Plan

1. *Market for Reorganized Equity*

There is currently no market for the Reorganized Equity and there can be no assurance as to the development or liquidity of any market for such equity. Moreover, while a public listing of the Reorganized Equity may be pursued to be effective on the Effective Date, there can be no assurance that the Reorganized Equity will be listed or traded on any securities exchange or any over-the-counter market on or after the Effective Date. If a trading market does not develop, is not maintained, or remains inactive, holders of the Reorganized Equity may experience difficulty in reselling such Reorganized Equity or may be unable to sell them at all. Even if such a market were to exist, such Reorganized Equity could trade at prices higher or lower than the estimated value set forth in this Disclosure Statement depending upon many factors including, without limitation, prevailing interest rates, markets for similar Reorganized Equity, industry conditions, and the performance of, and investor expectations for, Reorganized Holdings. Accordingly, holders of the Reorganized Equity may bear certain risks associated with holding securities for an indefinite period of time.

Furthermore, persons to whom the Reorganized Equity is issued under the Plan may prefer to liquidate their investments rather than hold such Reorganized Equity on a long-term basis. Accordingly, the market price for such Reorganized Equity could decline and any market that does develop for such Reorganized Equity may be volatile.

2. *Potential Dilution*

The ownership percentage represented by the Reorganized Equity distributed under the Plan as of the Effective Date to the applicable General Unsecured Claimholders that elect to exercise Rights Offering Subscription Rights shall be subject to dilution from the Rights Offering, the Backstop Premium, and the EIP. In the future, additional equity financings or other equity issuances by Reorganized Holdings may dilute the economic and voting rights of its existing Holders and could materially adversely affect the value of the Reorganized Equity.

3. *A Small Number of Holders Will Own a Significant Percentage of the Reorganized Equity*

Consummation of the Plan will result in a small number of Holders owning a significant percentage of the Reorganized Equity. Accordingly, these Holders

may, among other things, have significant influence over the business and affairs of Reorganized Holdings.

D. Additional Factors

1. *Certain Information Herein Was Provided by the Debtors and Relied Upon by the Plan Proponents' Advisors*

Counsel to and other advisors retained by the Plan Proponents have relied upon information provided by the Debtors, as well as information obtained from discovery, in connection with the preparation of this Disclosure Statement and the Plan. Although counsel to and other advisors retained by the Plan Proponents have attempted to verify the information contained herein, certain statements rely on documents and representations received from the Debtors. The Debtors' records are incomplete, and the Debtors and certain other parties did not fully comply with discovery requests. Although the Plan Proponents have undertaken great efforts to provide accurate and complete information in this Disclosure Statement, the Plan Proponents cannot warrant or represent that the information contained herein is complete and accurate.

The statements contained in this Disclosure Statement are made by the Plan Proponents as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has not been a change in the information set forth herein since that date. While the Plan Proponents have used their reasonably diligent efforts to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Plan Proponents nonetheless cannot, and do not, confirm the current accuracy of all statements appearing in this Disclosure Statement.

The financial information contained in this Disclosure Statement has not been audited unless explicitly stated otherwise. In preparing this Disclosure Statement, the Plan Proponents have relied predominantly on financial data derived from the Debtors' books and records that was available at the time of such preparation, together with information gathered through discovery. While the Plan Proponents believe that the financial information received from the Debtors' and relied upon in preparing this Disclosure Statement fairly reflects the financial condition of the Debtors, the Plan Proponents are unable to warrant or represent that the financial information contained herein and attached hereto is without inaccuracies.

2. *No Admissions Are Made by this Disclosure Statement*

The information and statements contained in this Disclosure Statement will neither constitute an admission of any fact or liability by the Plan Proponents nor be deemed evidence of the tax or other legal effects of the Plan on the Debtors, Holders of Allowed Claims or any other parties in interest. Except as otherwise provided in the Plan, the vote by a Holder of an Allowed Claim for or against the Plan does not constitute a waiver or release of any Claims or rights of the Plan Proponents to object to that Holder's Claim, or recover any preferential, fraudulent or other voidable transfer or

assets, regardless of whether any Claims or Causes of Action of the Debtors or their estates are specifically or generally identified herein.

In addition, no reliance should be placed on the fact that a particular litigation Claim or projected objection to a particular Claim is, or is not, identified in this Disclosure Statement. The Plan Proponents may seek to investigate, file, and prosecute objections to Claims and may object to Claims after the Confirmation or Effective Date of the Plan irrespective of whether this Disclosure Statement identifies such Claims or objections to Claims.

IX. CERTAIN SECURITIES LAW MATTERS

A. Issuance of the Reorganized Equity Under Section 1145 of the Bankruptcy Code and Backstop Premium Exemption

Except as expressly provided herein, all Reorganized Equity and Rights Offering Subscription Rights issued upon exercise of the Rights Offering Subscription Rights will be issued without registration under the Securities Act or any similar federal, state, or local law in reliance upon either (1) section 1145 of the Bankruptcy Code or (2) section 4(a)(2) of the Securities Act or Regulation D or Regulation S promulgated thereunder.

The Reorganized Equity and Rights Offering Subscription Rights issued upon exercise of the Rights Offering Subscription Rights offered to General Unsecured Claimholders on account of their respective Claims and in connection with the Rights Offering are expected to be issued without registration under the Securities Act or any similar federal, state, or local law in reliance on section 1145(a) of the Bankruptcy Code; provided that if the Plan Proponents determine, in consultation with the Creditors' Committee, that section 1145 of the Bankruptcy Code is not available for all or any portion of the Rights Offering, then the Reorganized Equity issued upon exercise of the Rights Offering Subscription Rights offered to General Unsecured Claimholders will be made pursuant to exemptions from registration under applicable securities laws.

The Reorganized Equity issued on account of the Backstop Premium is expected to be issued pursuant to the exemption from registration set forth in section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder.

In general, securities issued under section 1145 of the Bankruptcy Code may be resold without registration unless the recipient is an "underwriter" with respect to those securities. The Rights Offering Subscription Rights and the Reorganized Equity issued pursuant to the exemption from registration set forth in section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder will be considered "restricted securities" and may not be transferred except pursuant to an effective registration statement under the Securities Act or an available exemption therefrom.

B. Resale of Reorganized Equity; Definition of Underwriter

Section 1145(b)(1) of the Bankruptcy Code defines an "underwriter" as one who, except with respect to "ordinary trading transactions" of an entity that is not

an "issuer": (1) purchases a claim against, interest in, or claim for an administrative expense in the case concerning, the debtor, if such purchase is with a view to distribution of any security received or to be received in exchange for such claim or interest; (2) offers to sell securities offered or sold under a plan for the holders of such securities; (3) offers to buy securities offered or sold under a plan from the holders of such securities, if such offer to buy is (a) with a view to distribution of such securities and (b) under an agreement made in connection with the plan, with the consummation of the plan, or with the offer or sale of securities under the plan; or (4) is an issuer of the securities within the meaning of section 2(a)(11) of the Securities Act. In addition, a person who receives a fee in exchange for purchasing an issuer's securities could also be considered an underwriter within the meaning of section 2(a)(11) of the Securities Act.

The definition of an "issuer" for purposes of whether a person is an underwriter under section 1145(b)(1)(D) of the Bankruptcy Code, by reference to section 2(a)(11) of the Securities Act, includes as "statutory underwriters" all persons who, directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, an issuer of securities. The reference to "issuer," as used in the definition of "underwriter" contained in section 2(a)(11) of the Securities Act, is intended to cover "Controlling Persons" of the issuer of the securities. "Control," as defined in Rule 405 of the Securities Act, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. Accordingly, an officer or director of a reorganized debtor or its successor under a plan of reorganization may be deemed to be a "Controlling Person" of the debtor or successor, particularly if the management position or directorship is coupled with ownership of a significant percentage of the reorganized debtor's or its successor's voting securities. In addition, the legislative history of section 1145 of the Bankruptcy Code suggests that a creditor who owns ten percent or more of a class of securities of a reorganized debtor may be presumed to be a "Controlling Person" and, therefore, an underwriter.

Resales of the Reorganized Equity by entities deemed to be "underwriters" (which definition includes "Controlling Persons") are not exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law. Under certain circumstances, holders of Reorganized Equity who are deemed to be "underwriters" may be entitled to resell their Reorganized Equity pursuant to the limited safe harbor resale provisions of Rule 144 promulgated under the Securities Act. Generally, Rule 144 promulgated under the Securities Act would permit the public sale of securities received by such Person if the required holding period has been met and, under certain circumstances, current information regarding the issuer is publicly available and volume limitations, manner of sale requirements, and certain other conditions are met. Whether any particular Person would be deemed to be an "underwriter" (including whether the Person is a "Controlling Person") with respect to the Reorganized Equity, as applicable, would depend upon various facts and circumstances applicable to that Person. Accordingly, the Plan Proponents express no view as to whether any Person would be deemed an "underwriter" with respect to the Reorganized Equity and, in turn, whether any Person may freely resell their Reorganized Equity.

Unlike the securities that will be issued pursuant to section 1145(a)(1) of the Bankruptcy Code, any Reorganized Equity issued in reliance upon section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder will be deemed "restricted securities" that may not be offered, sold, exchanged, assigned, or otherwise transferred unless they are registered under the Securities Act or an exemption from registration under the Securities Act is available, including under Rule 144 or Rule 144A promulgated under the Securities Act.

Rule 144 provides an exemption for the public resale of "restricted securities" if certain conditions are met. These conditions vary depending on whether the holder of the restricted securities is an affiliate of the issuer. An affiliate is defined as "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the issuer."

A non-affiliate who has not been an affiliate of the issuer during the preceding three months may resell restricted securities after a six-month holding period if at the time of the sale there is available certain current public information regarding the issuer, and may sell the securities after a one-year holding period whether or not there is current public information regarding the issuer. Adequate current public information is available for a reporting issuer if the issuer has filed all periodic reports required under section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, during the twelve months preceding the sale of the restricted securities. If the issuer is a non-reporting issuer, adequate current public information is available if certain information about the issuer is made publicly available. The Plan Proponents can provide no assurances that Reorganized Holdings will continue to be a reporting issuer or that current public information will be available to allow resales by non-affiliates when the six-month holding period expires (approximately six months after the emergence date).

An affiliate may resell restricted securities after the six-month holding period if at the time of the sale certain current public information regarding the issuer is available and may resell the securities after a one-year holding period whether or not there is current public information regarding this issuer, subject in each case to the additional requirements below. As noted above, the Plan Proponents can provide no assurances that this information requirement will be satisfied. The affiliate must also comply with the volume, manner of sale, and notice requirements of Rule 144. First, the rule limits the number of restricted securities (plus any unrestricted securities) sold for the account of an affiliate (and related persons) in any three-month period to the greater of one percent of the outstanding securities of the same class being sold, or, if the class is listed on a stock exchange, the greater of one percent of the average weekly reported volume of trading in such restricted securities during the four weeks preceding the filing of a notice of proposed sale on Form 144. Second, the manner of sale requirement provides that the restricted securities must be sold in a broker's transaction, which generally means they must be sold through a broker and handled as a routine trading transaction. The broker must receive no more than the usual commission and cannot solicit orders for the sale of the restricted securities except in certain situations. Third, if the sale in any three-month period exceeds 5,000 restricted securities or has an aggregate sale price greater than $50,000, an affiliate must file with the SEC three copies

of a notice of proposed sale on Form 144. The sale must occur within three months of filing the notice unless an amended notice is filed.

The Plan Proponents believe that the Rule 144 exemption will not be available with respect to any Reorganized Equity issued in reliance upon section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder (whether held by non-affiliates or affiliates) until at least six months after the Effective Date. Accordingly, holders of such Reorganized Equity will be required to hold such Reorganized Equity for at least six months and, thereafter, to sell Reorganized Equity only in accordance with the applicable requirements of Rule 144, unless such Reorganized Equity is transferred pursuant to an effective registration statement or another available exemption from the registration requirements of the Securities Act.

The Reorganized Equity issued in connection with the Backstop Premium pursuant to Section 4(a)(2) and/or Regulation D will be issued in book-entry form and will bear a restrictive legend. Each book-entry representing, or issued in exchange for or upon the transfer, sale, or assignment of, any such shares shall be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED ON [DATE OF ISSUANCE], HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY OTHER APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN AVAILABLE EXEMPTION FROM REGISTRATION THEREUNDER."

Reorganized Holdings reserves the right to require certification or other evidence of compliance with Rule 144 or another available exemption as a condition to the removal of such legend or to any resale of the Reorganized Equity issued in connection with the Backstop Premium pursuant to Section 4(a)(2) and/or Regulation D. Reorganized Holdings also reserves the right to stop the transfer of any such shares if such transfer is not in compliance with Rule 144 or another available exemption. Any person who receives such shares will be required to acknowledge and agree not to resell such securities except in accordance with Rule 144, when available, or another available exemption and that the securities will be subject to the other restrictions described above.

ANY PERSONS RECEIVING "RESTRICTED SECURITIES" UNDER THE PLAN ARE URGED TO CONSULT WITH THEIR OWN COUNSEL CONCERNING THE AVAILABILITY OF AN EXEMPTION FROM REGISTRATION FOR RESALE OF THESE SECURITIES UNDER THE SECURITIES ACT AND OTHER APPLICABLE LAW.

BECAUSE OF THE COMPLEX, SUBJECTIVE NATURE OF THE QUESTION OF WHETHER A PARTICULAR PERSON MAY BE AN UNDERWRITER OR AN AFFILIATE AND THE HIGHLY FACT-SPECIFIC NATURE OF THE AVAILABILITY OF EXEMPTIONS FROM REGISTRATION UNDER THE SECURITIES ACT, INCLUDING THE EXEMPTIONS AVAILABLE UNDER SECTION 1145 OF THE

BANKRUPTCY CODE AND RULE 144 UNDER THE SECURITIES ACT, NONE OF THE PLAN PROPONENTS OR REORGANIZED HOLDINGS MAKE ANY REPRESENTATION CONCERNING THE ABILITY OF ANY PERSON TO DISPOSE OF THE SECURITIES TO BE DISTRIBUTED UNDER THE PLAN. POTENTIAL RECIPIENTS OF THE SECURITIES TO BE ISSUED UNDER THE PLAN ARE URGED TO CONSULT THEIR OWN COUNSEL CONCERNING WHETHER THEY MAY FREELY TRADE SUCH SECURITIES. POTENTIAL RECIPIENTS OF REORGANIZED EQUITY ARE URGED TO CONSULT THEIR OWN COUNSEL CONCERNING THEIR ABILITY TO FREELY TRADE SUCH SECURITIES WITHOUT COMPLIANCE WITH THE FEDERAL SECURITIES LAWS AND ANY APPLICABLE STATE LAW.

X. CONCLUSION AND RECOMMENDATION

The Plan Proponents believe that Confirmation and implementation of the Plan is preferable to any other alternative. The Plan Proponents urge all Holders of Claims entitled to vote to cast their Ballots to accept the Plan in accordance with the instructions provided herein and in the Solicitation Packages.

[Signature Page Follows]

Dated: July 8~~June 17~~, 2024
New York, New York

Respectfully submitted,

TOGUT, SEGAL & SEGAL LLP

~~/s/~~ *Kyle J. Ortiz*~~_~~

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