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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ELETSON HOLDINGS INC.'S OMNIBUS REPLY
IN SUPPORT OF ITS APRIL 16, 2025 MOTIONS

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

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Eletson Holdings Inc. ("Holdings"), by and through its undersigned counsel, hereby submits this omnibus reply (this "Reply") in further support of the Motions[2] and in response to the objections (collectively, the "Objections") filed by (a) purported "Provisional Holdings" [Docket Nos. 1640, 1643, 1649], (b) the Former Shareholders [Docket Nos. 1642, 1646], (c) Reed Smith [Docket No. 1645], and (d) the RRVW Firm and the JW Firm (together, the "Law Firms") [Docket No. 1644].

In support of this Reply, Holdings submits the Second Supplemental Declaration of Bryan M. Kotliar, Esq., filed contemporaneously herewith (the "Second Supplemental Kotliar Declaration"), and respectfully states:[3]

REPLY TO OBJECTIONS[4]

1. The chorus of Objections filed by Provisional Holdings, the Former Shareholders, Reed Smith, and the Law Firms recycle the same tired arguments and tactics that have been repeatedly rejected by this Court: delay, deflection, and deceit. They continue to argue that the Plan requires recognition in foreign jurisdictions—which it does not but for their own actions—and then weaponize that lack of recognition, which they are duty-bound to assist in obtaining, against Holdings and its affiliates and subsidiaries to frustrate implementation of the Plan. If they had their way,

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[2] "Motions" refers to (a) *Eletson Holdings Inc.'s Motion for Entry of an Order Awarding Attorneys' Fees and Costs* [Docket No. 1597] (the "Fees and Costs Motion"), (b) *Eletson Holdings Inc.'s Motion to Amend the Court's Foreign Opposition Sanctions Order [Docket No. 1537] to (A) Increase the Sanctions Amount and (B) Impose Sanctions on Laskarina Karastamati* [Docket No. 1602] (the "Motion to Amend"), (c) *Eletson Holdings Inc.'s Motion for Entry of an Order Compelling Reed Smith to Implement the Plan and Imposing Sanctions* [Docket No. 1607] (the "Reed Smith Motion"), and (d) *Eletson Holdings Inc.'s Motion for Entry of a Further Order in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization* [Docket No. 1605] (the "Arrests Motion"). Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the applicable Motion.

[3] Exhibits cited to herein as "Ex. __" are attached to the Second Supplemental Kotliar Declaration.

[4] For the Court's convenience, Holdings submits an omnibus reply as many of the points covered herein relate to more than one of the Motions and/or Objections.

the Confirmation Order would be "illusory," which is obviously not the case and would render the entire chapter 11 process pointless. *See* Docket No. 1339, Ex. 2 (Dec. 23, 2024 S.D.N.Y. Hr'g Tr.) at 20:24-21:2.

2. The Motions were filed because (1) the sanctions previously imposed by this Court have failed to achieve their intended coercive effect, as demonstrated by the proliferation of ***new*** actions and ***new*** foreign proceedings aimed at undermining the Plan and Confirmation Order ***since the sanctions orders were entered***, (2) despite having paid $53.5 million on the Effective Date, Holdings still lacks full access to the property that vested in it under the Plan, and (3) Holdings seeks compensation for the direct and substantial harm caused by the orchestrated campaign of obstruction led by the former owners and managers of Holdings, their proxies, and a revolving roster of counsel engaged to repackage baseless arguments under the veneer of fresh advocacy. None of the Objections argues that the parties are complying with this Court's orders. Instead, they argue that the orders either do not apply, should not apply, or cannot apply to themselves and their actions—all of which have the intended effect of nullifying Holdings' reorganization, which the Debtors voluntarily sought. The objectors want to further delay implementation of the Plan while their meritless appeals and reconsideration motions are pending despite the fact that all of the underlying orders are ***unstayed*** and ***immediately enforceable against them (and others)***.

3. The crux of many of the Objections is that there are actions that run through Eletson Gas, as directed by the Cypriot Nominees (*i.e.*, the Former Principals with a different name), and thus are outside of this Court's reach. The Court should reject this attempted gamesmanship. Importantly, the Cypriot Nominees could not have replaced the Eletson Gas Board and do not hold the Preferred Shares, and any assertions to the contrary violate the Stay Relief Order and other orders of this Court.

And at the very least, Holdings, as the holder of the Eletson Gas Common Units and on account of its appointees to the Eletson Gas Board, has consent rights over any "Fundamental Actions," including the hiring and firing of outside counsel, like Reed Smith and the other Law Firms (whose supposed retention Holdings and its appointees have not authorized).

4. Put simply, the Plan and the ***unstayed*** Confirmation Order are still the Plan and the ***unstayed*** Confirmation Order. The numerous additional orders required to enforce the Plan are still the Court's ***unstayed*** orders. As set forth in more detail below, none of the Objections provides any basis for the Court to deny the relief requested in the Motions. Accordingly, Holdings respectfully requests that the Objections be overruled, and the Motions be granted in their entirety.

A. <u>The Fees and Costs Motion</u>

5. The Fees and Costs Motion seeks compensation for the mounting attorneys' fees and costs incurred by Holdings as a direct consequence of the Sanctioned Parties' willful disregard of this Court's orders. Far from expanding or altering the Confirmation Order, the Fees and Costs Motion merely seeks to enforce existing obligations and compensate Holdings for the substantial and ongoing harm it continues to suffer due to the obstructionist tactics of the Sanctioned Parties. The relief sought falls squarely within this Court's jurisdiction and should be granted.

(1) <u>The Court Has Jurisdiction to Approve the Fees and Costs Motion</u>

6. Mr. Hadjieleftheriadis, Keros Shipping Corporation, the purported Provisional Board, and the Former AOR did not object to the Fees and Costs Motion. Thus, the order can be entered against them on default. *See, e.g., Bermudez v. Reid*, 733 F.2d 18, 21 (2d Cir. 1984) ("[I]n civil cases, where a party fails to respond, after notice the

court is ordinarily justified in entering a judgment against the defaulting party.") (citing Fed. R. Civ. P. 55(b)(2)).

7. Provisional Holdings and the Former Shareholders, on the other hand, incorrectly argue that the Court lacks jurisdiction to consider this motion because the Consummation Order, the AOR Sanctions Order, and the Foreign Opposition Sanctions Orders have been appealed. *See* Provisional Holdings Obj. ¶¶ 18-25; Former Shareholders Obj. ¶¶ 6-10. Bankruptcy Rule 8008 does not apply here. The Fees and Costs Motion does not seek to modify or alter the appealed orders. Rather, it seeks an award of fees and costs as a separate and additional monetary sanction in connection with the enforcement of the unstayed Confirmation Order, the Consummation Order, the AOR Sanctions Order, and the Foreign Opposition Sanctions Order. Courts in this Circuit routinely hold that the mere pendency of an appeal does not divest the bankruptcy court of jurisdiction to award fees incurred in enforcing compliance with unstayed orders. *See In re Bd. of Directors of Hopewell Int'l Ins. Ltd.*, 258 B.R. 580, 583 (Bankr. S.D.N.Y. 2001) ("[A] bankruptcy court retains jurisdiction, while an appeal is pending and in the absence of a stay, to enforce the order or judgment appealed from. . . 'This is true because in implementing an appealed order, the court does not disrupt the appellate process so long as its decision remains intact for the appellate court to review.'" (quoting *In re Prudential Lines, Inc.*, 170 B.R. 222, 243 (S.D.N.Y.1994), appeal dismissed, 59 F.3d 327 (2d Cir.1995)); *In re Sabine Oil & Gas Corp.*, 548 B.R. 674, 679 (Bankr. S.D.N.Y. 2016) (same) (citing *Hopewell* and *Prudential Lines*). To hold otherwise would award the Sanctioned Parties' escalating defiance of the Confirmation Order and grant them an indefinite backdoor stay of the Confirmation Order and the numerous prior sanctions orders of this Court—none of which have been stayed under Bankruptcy Rule 8007 (or even sought to be stayed). *See* Fed. R. Bankr. P. 8007; *see also*

Sabine, 548 B.R. at 680 (rejecting interpretation of divesture doctrine that "would effectively cede control of the conduct of a chapter 11 case to disappointed litigants. This cannot be, and is not, the law.").[5]

8. Moreover, the orders on appeal expressly reserved Holdings' right to seek fees and costs as a form of compensatory and/or coercive monetary sanctions for the Sanctioned Parties' noncompliance. *See* Mot. Fees and Costs ¶ 34. Those orders are all unstayed. Thus, the pending appeals have no bearing on the Sanctioned Parties' continuing obligations under the orders, nor do they preclude the Court from enforcing those obligations and awarding Holdings compensatory damages for the harm it has suffered, and continues to suffer. *See Zaks*, 2022 WL 4783215, at *7.

9. The Former Shareholders and Provisional Holdings also request, in the alternative, that the Court defer ruling on the Fees and Costs Motion until the appeals are resolved. *See* Provisional Holdings Obj. ¶¶ 18-25; Former Shareholders Obj. ¶ 10. This argument is just another attempt (among many) by Eletson's former management and owners to obtain a *de facto* backdoor stay of the Confirmation Order, and each of the subsequent related sanctions orders, without actually moving for a stay, let alone satisfying Bankruptcy Rule 8007. The Court previously denied a stay of the Consummation Order (*See* Docket No. 1450) and the Sanctioned Parties did not even bother to seek a stay of the other orders. Seeking a *de facto* stay now is inappropriate.

[5] The Former Shareholders' reliance on *In re Wonder Corp. of Am.* is misplaced. 81 B.R. 221, (D. Conn. 1988) (ruling on a motion for sanctions related to frivolous litigation by a secured creditor that was unrelated to the enforcement of existing order). Here, as discussed above, the Fees and Costs Motion does not seek to "expand" or "alter" any of the prior orders of this Court. Rather, it seeks separate relief in connection with enforcement of the Plan and Confirmation Order. *See Prudential Lines, Inc.*, 170 B.R. at 244 ("[I]t has long been held that in the absence of a stay pending appeal of the plan confirmation, the bankruptcy court is entitled to implement the plan[.]"); *Zaks v. Mosdos Chofetz Chaim, Inc.*, Case No. 21-CV-10441 (PHM), 2022 WL 4783215, at *7 (S.D.N.Y. Oct. 3, 2022) (holding that bankruptcy court may enforce prior injunction where order of enforcement does not expand the scope of the injunction).

10. Despite the cascade of sanctions orders issued by this Court, the Sanctioned Parties' misconduct remains unabated. Deferring a ruling on this motion would only embolden further noncompliance by the Sanctioned Parties, and exacerbate the harm suffered by Holdings.

(2) Arguments Related to the Reasonableness of Fees Are Premature

11. The Former Shareholders and Provisional Holdings argue that the requested fees and costs are unreasonable and lack sufficient documentation. *See* Provisional Holdings Obj. ¶¶ 12-16; Former Shareholders Obj. ¶¶ 6-8. This argument is premature.

12. The procedures set forth in the Proposed Order provide for the filing of detailed invoices and time entries that can be reviewed and challenged for reasonableness at a later stage. That application will also include sufficient detail for this Court to determine which fees and costs are attributable to specific sanctionable conduct by specific Sanctioned Parties. The present request is for a conditional award only. Courts have routinely approved such conditional awards, reserving the right to evaluate reasonableness at the appropriate time. *See, e.g., Boca Aviation Ltd. v. AirBridgeCargo Airlines, LLC*, Case No. 22-CV-2070 (LJL), 2023 WL 2346321, at *1 (S.D.N.Y. Mar. 3, 2023) ("conditionally" awarding Plaintiff its attorneys' fees and costs "incurred in compelling Defendants' compliance with this Court's orders" and directing the plaintiff "to submit an application for attorneys' fees and costs"); *Accetola v. Mei He*, Case No. 23-cv-1983 (LJL), 2024 WL 3274436, at * 6 (S.D.N.Y. July 1, 2024) (same); *Cyzmmek v. Fenstermaker*, Case No. 23-cv-8124 (LJL), 2024 WL 246438, at *7 (S.D.N.Y. Sept. 23, 2024) (same).

(3) Joint and Several Liability is Warranted Here

13. The Former Shareholders attempt to distance themselves from the conduct of Provisional Holdings and the purported Provisional Board, arguing that they should not be held jointly and severally liable for fees and costs incurred as a result of those parties' contemptuous conduct. *See* Former Shareholders Obj. ¶¶ 3-4. This argument ignores the Court's findings that the Sanctioned Parties acted in concert to obstruct the Plan's implementation, as demonstrated by their coordinated efforts in Liberia and Greece. *See* Foreign Opp. Sanctions Order ¶ 1; Mar. 12 Decision at 79:17-23.

14. Further, the record reflects admissions by the Sanctioned Parties, including statements that Vasillis Kertsikoff and Laskarina Karastamati made in these proceedings and the JAMS Arbitration proceeding, acknowledging that they are part of the same corporate family and effectively operate as a single economic enterprise. *See, e.g.,* Docket Nos. 580 ¶¶ 11-13, 135; 581 ¶¶ 5-6. As such, although this Court need not find joint and several liability for all of the fees and costs, joint and several liability is warranted here. *See, e.g., In re Spectee Grp., Inc.*, 185 B.R. 146, 163 (Bankr. S.D.N.Y. 1995) (awarding attorneys' fees and costs on joint and several basis where sanctioned parties "colluded and are equally culpable") (internal citations omitted); *In re Soundview Elite, Ltd.*, Case No. 15 CIV. 5666 (KPF), 2016 WL 1178778, at *17 (S.D.N.Y. Mar. 23, 2016) (upholding bankruptcy court award of attorneys' fees and cost on joint and several basis "in light of the interdependence of the Appellants, and their repeated efforts to obfuscate the facts during the bankruptcy court proceedings").

15. In addition, the Court's prior findings make clear that the obstruction of the Plan perpetrated by the Sanctioned Parties would not have been possible without each of these parties' individual acts of defiance as part of a collective strategy to undermine the Confirmation Order and prevent implementation of the Plan.

The attorneys' fees and costs incurred by Holdings in connection with the Consummation Order, the AOR Sanctions Order, the Foreign Opposition Sanctions Order, and the foreign proceedings in Liberia and Greece would not have been necessary but for the conduct of purported Provisional Holdings, the purported Provisional Board, and the Former Shareholders. *See* Mar. 12 Decision at 77:2-81:2; Feb. 20 Decision at 97:9-102:1; Jan. 24 Decision at 42:23-44:12. Each of those parties had the power to help implement the Plan, as they were required to do under the Plan and Confirmation Order. None of them did.

16. Thus, the Court should grant the Fees and Cost Motion.

B. <u>The Motion to Amend</u>

17. Ms. Karastamati did not object to the Motion to Amend, which seeks to include her as part of the "Violating Parties" subject to the Foreign Opposition Sanctions Order, and to impose sanctions on her, like the other Violating Parties, for not complying with that order. *See* Mot. to Amend ¶¶ 15-20.[6] Thus, the proposed amended Foreign Opposition Sanctions Order can be entered against Ms. Karastamati on default. *See, e.g., Bermudez*, 733 F.2d at 21.

18. Provisional Holdings and the Former Shareholders argue that the Court lacks jurisdiction to modify the Foreign Opposition Sanctions Order as requested in the Motion to Amend because they have appealed the order. *See* Provisional Holdings Obj. ¶¶ 2, 55-63; Former Shareholders Obj. ¶¶ 1, 16-19. This argument fails

[6] Holdings served the Motion to Amend on Ms. Karastamati via first class mail and e-mail in the same manner that Holdings previously served other motions to compel and sanctions motions in this case. *Compare* Affidavit of Service [Docket No. 1621] *with* Affidavit of Service [Docket No. 1406] *and* Affidavit of Service [Docket No. 1408]. The Court has already held that service in this manner is appropriate. *See* Feb. 20 Decision at 92:3-7 ("The Court agrees with the Reorganized Holdings that service by Verita and Togut by direct mail and email to former directors, shareholders, and their respective attorneys to be sufficient notice.").

for a number of reasons. First and foremost, neither Provisional Holdings nor the Former Shareholders has standing to argue that Ms. Karastamati cannot be added to the Foreign Opposition Sanctions Order. The Motion to Amend concerns her in her individual capacity and she defaulted. *Bermudez*, 733 F.2d at 21.

19. Second, Bankruptcy Rule 8008 ("Indicative Rulings") specifically provides that where a bankruptcy court lacks jurisdiction because of a pending appeal, the bankruptcy court can nonetheless render an indicative ruling. Fed R. Bankr. P. 8008(a)(3) ("If a party files a timely motion in the bankruptcy court for relief that the court lacks authority to grant because an appeal has been docketed and is pending, the bankruptcy court may . . . state that it would grant the motion if the court where the appeal is pending remands for that purpose[.]"); *see also* Provisional Holdings Obj. ¶ 58 (citing Fed. R. Bankr. P. 8008(a)(3)). Thus, even if the objectors are correct, the Court can still enter an order stating that it would enter the amended order on remand with increased sanctions, and sanctions against Ms. Karastamati, which would be enforceable from the date that the Foreign Opposition Sanctions Order is affirmed. The Court should do so to conserve the Court's and the parties' resources, and to make clear that the Violating Parties' continuing misconduct will not go unpunished.

20. Provisional Holdings and the Former Shareholders are looking for any excuse to avoid complying with their obligations under the Foreign Opposition Sanctions Order or cooperating with Holdings in good faith to implement the Plan. So, they reiterate the same arguments about foreign law that this Court has rejected numerous times (*see* Jan. 24 Decision at 33:4-36:17; Feb. 20 Decision at 98:22-99:9, 101:17-103:23), and raise new, untimely arguments that are completely irrelevant. *See Goonan v. Fed. Reserve Bank of N.Y.*, Case No. 12-cv-3859 (JPO), 2013 WL 1386933, at *2 (S.D.N.Y.

Apr. 5, 2013) ("Simply put, courts do not tolerate such efforts to obtain a second bite at the apple.") (citation omitted).

21. For example, the Former Shareholders argue that Holdings has not satisfied the test established by the Second Circuit in *China Trade & Development Corp. v. M.V. Choong Yong*, 837 F.2d 33 (2d Cir. 1987) for an anti-foreign-suit injunction. *See* Former Shareholders Obj. ¶¶ 3, 22-27. This is as meaningless and inapplicable as their constant references to international comity and extraterritoriality. This Court has held multiple times that it can compel parties before it to implement the Plan and Confirmation Order and enjoin them from interfering with implementation of the Plan consistent with sections 1141 and 1142 of the Bankruptcy Code. *See* Mar. 12 Decision at 62:9-64:11; *see also* Jan. 24 Decision at 33:9-17; 41:2-15; Feb. 20 Decision at 95:21-96:25. Moreover, the *China Trade* factors for foreign anti-suit injunctions deal principally with foreign law and comity issues that this Court has already found inapplicable. *See, e.g.*, *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC ("Madoff")*, 460 B.R. 106, 122 (Bankr. S.D.N.Y. 2011) ("Maxam Limited cannot use notions of international comity to undermine the Court's exclusive jurisdiction and interfere with the administration of the estate.").

22. As *Madoff* makes clear, the *China Trade* factors are inapplicable in cases involving an injunction included in a final order by a bankruptcy court. *See id.* at 122 (finding *China Trade* factors inapplicable in stay enforcement order under section 105 of the Bankruptcy Code). Requiring every order confirming a bankruptcy plan involving foreign parties to comply with the *China Trade* factors would be extraordinary relief that would seriously hinder a bankruptcy court's ability to confirm a plan and enforce its own orders. *See Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 928 (D.C. Cir. 1984) ("When the [anti-suit] injunction is required after a previous

judgment on the merits, there is little interference with the rule favoring parallel proceedings in matters subject to concurrent jurisdiction. Thus, a court may freely protect the integrity of its judgments by preventing their evasion through vexatious or oppressive relitigation"); *see also In re Rimsat, Ltd.*, 98 F.3d 956, 963 (7th Cir. 1996) ("Comity is a doctrine of adjustment, not a mandate for inaction.").

23. Regardless, any arguments relating to the purported applicability of the *China Trade* factors to the Plan should have been made at the confirmation stage. The Former Shareholders failed to do so, and thus the argument is now waived. *See In re Johns-Manville Corp.*, 759 F.3d 206, 219 (2d Cir. 2014) (failure to raise an argument in bankruptcy court constitutes waiver, even if the argument was subsequently raised in the district court); *see also In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 133 (2d Cir. 2008) ("[T]he circumstances normally do not militate in favor of an exercise of discretion to address new arguments on appeal where those arguments were available to the [parties] below and they proffer no reason for their failure to raise the arguments below.") (internal quotations omitted).

24. Provisional Holdings, on the other hand, argues that Holdings misrepresents the various foreign proceedings because none of them "undermine the judicial recognition of the Confirmation Order." *See* Provisional Holdings Obj. ¶¶ 64-80. But the Plan is binding and any actions not expressly authorized by the Plan Proponents are forbidden. *See* Confirmation Order ¶ 5(iii). The Violating Parties filed those actions in violation of their obligations to (a) "cooperate in good faith to implement and consummate the Plan" (*see* Confirmation Order ¶ 5(i); *see also* Consummation Order ¶ 1), (b) "take all steps reasonably necessary as requested by Holdings to unconditionally support the effectuation, implementation, and consummation of the Plan" (*see* Consummation Order ¶ 2), (c) "not take any actions

inconsistent with the Plan or th[e] Confirmation Order without the prior written consent of the Petitioning Creditors or further order of th[e] Court" (*see* Confirmation Order ¶ 5(iii)), and (d) not take "any actions to interfere with the implementation or consummation of the Plan" (*see* Confirmation Order ¶ 12); *see also* Docket No. 1339, Ex. 2 (Dec. 23, 2024 S.D.N.Y. Hr'g Tr.) at 31:20-23 (stating that if "the former owners of Eletson, the former directors of Eletson, want relief from those provisions of the plan, go to what is or what would have been the bankruptcy court . . . ."); *see also* Docket No. 1448, Ex. B (Feb. 14, 2025 S.D.N.Y. Hr'g Tr.) at 45:24-46:3 (the District Court asking counsel at Reed Smith whether "the provisional board has done everything within its power, has used its best efforts to ensure that the plan is recognized in [Greece and Liberia]."). Acting as if they are Holdings and/or its subsidiaries is quintessential to undermining the implementation of the Plan and violating the Confirmation Order.

25. In all of the foreign proceedings, the Violating Parties should be assisting Holdings in obtaining the recognition that they argue is required, not opposing it, as they have so ardently done. Provisional Holdings argues that the LISCR Actions—which were filed purportedly on behalf of Holdings after Holdings and its Liberian subsidiaries finally updated their AORs in Liberia without any help from the parties compelled by this Court to assist in that process (*see* Motion to Amend ¶¶ 9-14)—"sought to address the legal authority relied upon by LISCR to change the AOR of Holdings." Provisional Holdings Obj. ¶ 65. It strains credulity that actions seeking to unwind the change in Holdings' and its subsidiaries' AORs and seek a stay against LISCR regarding further actions involving the Company do not constitute an attack on judicial recognition of the Confirmation Order. Indeed, the LISCR Actions were filed

without Holdings' consent, authorization, or input.[7] To say they seek to undermine this Court's orders would be an understatement.

26. Despite Provisional Holdings' lip service to the contrary (Provisional Holdings Obj. ¶¶ 67-70), the Greek Proceedings similarly are designed to undermine the Confirmation Order abroad, as this Court has already held. *See* Mar. 12 Decision at 6:16-9:22. The Court need look no further than Ms. Karastamati, whose testimony as a cooperating witness in opposing recognition in Greece stated that the Plan and Confirmation Order could not be recognized ***at all***. Docket No. 1603, Ex. 12 (Mar. 19, 2025 Athens Court Hr'g Minutes) at 22-26. And the arguments about Holdings' COMI precluding recognition of the Plan and Confirmation Order that have been raised in Greece are arguments that could have, and should have been raised, at confirmation, but were not. *See* Docket No. 1448, Ex. B (Feb. 14, 2025 S.D.N.Y. Hr'g Tr.) at 99:12-17 (Judge Liman: "Tellingly, none of the arguments that Rimon and Reed Smith now make regarding the ability of Eletson Holdings to act and the notion that it cannot act without the approval of . . . Greece were made when the debtors were challenging the feasibility of the petitioning creditors plan."); *see also In re Purdue Pharma L.P.*, 633 B.R. 53, 70-71 (Bankr. S.D.N.Y. 2021) (rejecting feasibility confirmation objection based upon threat that Canadian courts would not recognize confirmation order) (appellate history omitted). Of course, what Provisional Holdings and Reed Smith neglect to mention is that the COMI theory, if timely made, would have applied equally to the

[7] In the hearsay-filled Markianos-Daniolos Declaration filed in support of Provisional Holdings' objection [Docket No. 1641], Mr. Markianos-Daniolos—who refers to himself in that declaration as "counsel to Provisional Eletson Holdings Inc."—attaches an email sent to him from Manolis Andreoulakis, Holdings' former AOR (the "Former AOR") dated April 9, 2025—more than two weeks prior to Holdings' discovering the Former AOR's identity when Holdings was served on April 24, 2025, with the action commenced by the Former AOR in the Marshall Islands. *See* Supplement to Motion to Amend [Docket No. 1629] ¶ 3.

Debtors' proposed plan which also cancelled the Debtors' equity interests—yet the Debtors never identified such issues in connection with their plan either. *See, e.g.*, Docket No. 1111 at § II(c)(8)(b) ("On the Effective Date, all Interests shall be discharged, cancelled, and extinguished."). Any COMI argument should have been raised during the confirmation trial, and the fact that it was not demonstrates its lack of merit.

27. As for the Berenberg Proceedings, Provisional Holdings argues, for the first time nearly six months after the Effective Date, that the Confirmation Order must be recognized in Germany. *See* Provisional Holdings Obj. ¶ 71. These actions, by definition, are designed to undermine judicial recognition of the Confirmation Order, as Holdings' interests in its wholly-owned subsidiaries Eletson Corp. and EMC Investment vested in Holdings on the Effective Date pursuant to section 5.2(c) of the Plan and paragraph 7 of the Confirmation Order.[8] The Berenberg Proceedings were filed without Holdings' consent and interfere with Holdings' efforts to replace the authorized signatories to the Eletson Corp. and EMC Investment accounts with Berenberg. Documents obtained by Holdings from Berenberg show that funds have been improperly diverted from those entities, without Holdings' approval, including to pay Reed Smith. Ex. 1 (Corp. Berenberg Bank Statements) at 11 (showing $1,000,020 payment to Reed Smith on the Effective Date); *see also* Ex. 13 (German Action against Berenberg) at PDF pages 5-6 (describing effort to $500,000 transfer to Reed Smith from Eletson Corp.'s account at Berenberg Bank).

[8] Even under Provisional Holdings' view that Provisional Holdings exists somehow separate from "Reorganized Holdings" (which is defined in the Plan as "Eletson Holdings from and after the Effective Date" (Plan § 1.126)), section 5.2(c) of the Plan and paragraph 7 of the Confirmation Order provide that Holdings' interests in its subsidiaries, including Eletson Corp. and EMC Investment, "***vested in Reorganized Holdings*** . . . ." *See* Plan § 5.2(c) (emphasis added); Confirmation Order ¶ 7 (same).

28. Finally, as to the Greek Arbitration Confirmation Petition and the English Arbitration Confirmation Petition, Provisional Holdings again attempts to re-litigate issues already decided by this Court, namely whether the Greek Arbitration Confirmation Petition was properly included on the exhibit to the Foreign Opposition Sanctions Order. *See* Docket No. 1603, Ex. 14 (Mar. 25, 2025 Hr'g Tr.) at 6:16-10:2. For the same reasons that the Greek Arbitration Confirmation Petition is included in the exhibit, and for the same reasons that the Court overruled the objections to inclusion of that petition in the Foreign Opposition Sanctions Order, the English Arbitration Confirmation Petition is substantially similar and should be included as well. *See* Mot. to Amend ¶¶ 23-25.

29. Provisional Holdings makes another new argument—that the Court cannot fashion relief against non-debtor Eletson Gas. *See* Provisional Holdings Obj. ¶ 79. But that is not what the Foreign Opposition Sanctions Order does—it applies to the Violating Parties that are before the Court who are purporting to pursue the English Arbitration Confirmation Petition. Provisional Holdings' arguments that Holdings does not control actions to confirm the Arbitration Award as "Retained Causes of Action" under the Plan would apply equally to Provisional Holdings. And Provisional Holdings' statement that the English proceeding—which was filed by Eletson Gas (with Reed Smith improperly purporting to serve as counsel) via the Cypriot Nominees' purported appointees to the Eletson Gas Board in violation of the Stay Relief Order—seeks "to preserve clear contract rights arising under" the Arbitration Award (Provisional Holdings Obj. ¶ 84) is disingenuous, since it is the Former Principals that abruptly changed course and pushed the benefit of that award away from Holdings. In making these arguments, Provisional Holdings reveals its true colors: it is acting for the benefit of the Former Principals, whose interests, as opposed

to Holdings' interests, would be served by winning the Greek Arbitration Confirmation Petition and the English Arbitration Confirmation Petition. In addition, retaining Reed Smith to act on behalf of Eletson Gas is a "Fundamental Action" requiring Holdings' approval. *See* Behlman Decl. [Docket No. 1644-1], Ex. G (LLCA Amendment) § 3.2 (emphasis added).

30. Accordingly, the Court should grant the Motion to Amend.

C. The Arrests Motion

31. The Former Principals did not object to the Arrests Motion seeking to compel and sanction them for their actions in opposing the Arrest Proceedings.[9] Thus, the Proposed Order can be entered against the Former Principals on default. *See, e.g., Bermudez*, 733 F.2d at 21.

32. As for the Law Firms, their entire argument boils down to the following: (1) they are not clearly and conspicuously violating any orders of the Court because (2) they are authorized to act for Eletson Gas and EMC Gas in the Arrest Proceedings under the theory that the Cypriot Nominees (i) control the Preferred Shares and (ii) used the Preferred Shares to replace the Preferred Appointees to the Eletson Gas Board. The Law Firms are wrong.

(1) The Cypriot Nominees Do Not Hold the Preferred Shares

33. The Objections ignore the Stay Relief Order, which was violated when the Cypriot Nominees purported to execute a Notice of Removal and

[9] Holdings served the Motion to Amend on the Former Principals via first class mail and e-mail in the same manner that Holdings previously served other motions to compel and sanctions motions in this case. *Compare* Affidavit of Service [Docket No. 1621] *with* Affidavit of Service [Docket No. 1406] *and* Affidavit of Service [Docket No. 1408]. The Court has already held that service in this manner is appropriate. *See* Feb. 20 Decision at 92:3-7 ("The Court agrees with the Reorganized Holdings that service by Verita and Togut by direct mail and email to former directors, shareholders, and their respective attorneys to be sufficient notice.").

Appointment of New Directors of Eletson Gas LLC, ***dated February 26, 2024*** (the "Cypriot Nominees' Director Appointment") and replace the Preferred Appointees to the Eletson Gas Board with Eleni Chatzieleftheriadis, Konstantinos Kertiskoff, Adrianos Psomadakis-Karastamatis, and Maria Biniou. *See* Docket No. 1367 (the "Levona Stay Motion") at ¶¶ 2, 30, 35; Docket No. 1476, at ¶¶ 9-13; *see also* Docket Nos. 1387, 1431, 1575.[10] The Court should thus hold that these actions are void. *Id.*

34. The Arbitration Award is stayed pending further order of this Court (*see* Stay Relief Order ¶ 4), which has not been obtained. Reed Smith—on behalf of whoever it purports to represent—and the Cypriot Nominees, have both acknowledged this point. *See* Ex. 2 (May 6, 2025 S.D.N.Y. Hr'g Tr.) at 18:5-7, 15-17 (counsel for the Cypriot Nominees stating "[t]hat enforcement will not take place unless there's a return to this court or to the bankruptcy court . . . We stand by it, that enforcement will not take place without returning to the U.S."); Docket No. 309 (Dec. 4, 2023 Hr'g Tr.) at 104:4-6 (Reed Smith stating that "if and when we succeed in that, the motion will be confirmed, the final award will then come back to Your Honor.").

35. Because the Arbitration Award is stayed, it is legally inoperative. *See D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 104 (2d Cir. 2006) ("Because arbitration awards are not self-enforcing, they must be given force and effect by being converted to judicial orders by courts[.]" (cleaned up and citation omitted); *Fox v. Bd. of Trs. of State Univ. of New York*, 42 F.3d 135, 142 (2d Cir. 1994) (noting a "judgment was stayed and is effectively inoperative"); *Donel Corp. v. Kosher Overseers Ass'n of Am., Inc.*, Case No. 92

[10] The Court heard oral argument on the Levona Stay Motion on March 3, 2025. As of the date hereof, the Court has not issued a decision with respect to the motion.

CIV. 8377 (DLC), 2001 WL 1135625, at *1 (S.D.N.Y. Sept. 26, 2001) (finding no contempt based on conduct occurring after the arbitration award was rendered, but before the court confirmed the award, because "[t]he arbitration award entered in Donel's favor was . . . not enforceable until it was confirmed by this Court."). Thus, no effect can be given to the finding that the Cypriot Nominees own the Preferred Shares—including their purported replacement of the Preferred Holder appointees to the Eletson Gas Board pursuant to the Cypriot Nominees' Director Appointment—unless and until a final determination by this Court.[11] Because Holdings is one of the "claimants" in the Arbitration (along with its wholly-owned subsidiary, Eletson Corp.), the right to confirm and enforce the Arbitration Award, if confirmed, is a Retained Cause of Action under the Plan. *See* Plan §§ 1.65, 1.128, 5.2(c).

36. The Law Firms' argument that the District Court "***confirmed***" the Arbitration Award's findings that the Preferred Shares had been transferred to the Cypriot Nominees "as of March 11, 2022" (*see* Law Firm Obj. at 2, 7, 14, 16) is a false statement. The District Court ***did not*** confirm the findings in the Arbitration Award. The District Court made clear during the January 2, 2024 hearing on confirmation and vacatur that the court did not make any findings on the merits. Ex. 3 (Jan. 2, 2024 S.D.N.Y. Hr'g Tr.) at 77:22-25. In addition, the court repeatedly stated that confirmation under the Federal Arbitration Act involves only the narrow question of arbitral authority and manifest disregard—*i.e.*, not substantive agreement with the Arbitrator's conclusions. *See, e.g.*, *id.* at 72:25-72:2 ("[Y]ou can argue that the arbitrator's findings

[11] As discussed below, even if the Status Quo Injunction remained operative, that injunction prohibited the Preferred Nominees from executing the Cypriot Nominees' Director Appointment which purported to replace the Preferred Holder appointees to the Eletson Gas Board. *See infra* ¶ 55.

constitute collateral estoppel, but you can't argue that anything I do constitutes estoppel.").

37. Even without these clarifications, on February 14, 2025, the District Court *sua sponte* amended its opinion and order confirming the Arbitration Award, in part, stating that its decision is "subject to the resolution of Levona's pending motion to vacate the award and its defense based on fraud in the arbitration." *See* Docket No. 1448, Ex. B (Feb. 14, 2025 S.D.N.Y. Hr'g Tr.) at 115:9-25. In so doing, the District Court "clarif[fied] what should already have been clear from the record, which is that the Court only ruled on the issues that were then in front of it, that there is a question of whether the award will be vacated, that until that issue is resolved the Court cannot finally confirm the award, and that when and if the confirmation/vacatur proceedings go to the Second Circuit, they should go in a single package"). *Id.* Nowhere does the Law Firm Objection acknowledge this fact or the fact that the District Court has raised substantial issues with the entirety of the Arbitration Award potentially being vacated as being procured by fraud. Ex. 4 (Sept. 6, 2024 S.D.N.Y. Opinion and Order) at 16 ("Crediting the inferences for which Levona argues, the newly-produced documents put to lie to Eletson's suggestion that these documents would be irrelevant . . . . They tend to show fraud in the arbitration proceeding."); *id.* at 47 ("Levona has presented evidence that, if credited, would show that Eletson engaged in fraudulent activity that Levona could not have discovered and that went to a pivotal issues in the arbitration.").

38. Finally, even if the Arbitration Award is not vacated for fraud and the findings are someday confirmed, there are substantial questions about its enforceability and the purported transfer of the Preferred Shares to the Cypriot Nominees such that the transaction could still be unwound as, *e.g.*, a fraudulent transfer. Pursuant to Section 5.2(c) of the Plan, Holdings owns all "Retained Causes of

Action," which expressly include "Avoidance and Other Actions and all claims and Causes of Action related to or arising under the Eletson Gas Transfer" (which is defined, in turn, as "any purported transfer of preferred shares in Eletson Gas LLC"). *See* Plan §§ 1.65, 1.128, 5.2(c).

(2) The Preferred Holders Do Not Control the Eletson Gas Board

39. The Law Firms argue that "**(i) Eletson Holdings 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**." Law Firm Obj. at 9 (emphasis in original).[12] Holdings does not disagree and has not taken a contrary position in the Arrests Motion. The Law Firms acknowledge this, when they admit that "[t]he Eletson Gas does not prohibit this action [referring to Holdings removing the Common Unit appointees to the Eletson Gas Board pursuant to the Holdings Consent], as the Debtor has the sole right to remove and replace any directors it validly appointed to the Eletson Gas Board (but no others)." Law Firm Obj. at 11.[13]

40. However, the Law Firms overlook the fact that the Preferred Holders do not unequivocally control the Eletson Gas Board: Section 3.2 of the LLCA Amendment states that "the prior approval of at least four Directors (***including at least one Eletson Director*** [meaning, the director appointed by Holdings] shall be required in

[12] In the objection, "Preferred Holders" is defined as "the holders of the Preferred Shares." Law Firm Obj. at 8.

[13] Contrary to the Law Firm's Objection, Holdings has not asserted that it controls the Eletson Gas Board, but rather, as the foregoing explanation makes clear, Holdings controls the Common Unit appointees to the Eletson Gas Board.

order for the Company to undertake, or permit or cause any Group Company to undertake" any "Fundamental Action." *See* Behlman Decl. [Docket No. 1644-1], Ex. G (LLCA Amendment) § 3.2 (emphasis added). "Fundamental Action" is specifically defined to include the retention or termination of counsel. *See id.* at Schs. VI(w) & VII(n).[14]

41. The Eletson Director did not consent to Eletson Gas or any Group Company retaining the Law Firms in the Arrest Proceedings (or the UK Arbitration Confirmation Proceeding or Greek Arbitration Confirmation Proceeding). Thus, when the Law Firms state that the "President of each of Kithnos SME, Kithira Gas, and Ithaki Gas"—*i.e.*, Group Companies of Eletson Gas—"engaged the Law Firm Respondents on their behalf" (Law Firms Obj. at 15), this action violates the LLCA. The Law Firms cannot rely on the President as an end around the Fundamental Action restrictions on Eletson Gas and its subsidiaries because section 3.1(c) of the LLCA that proscribes officers' rights and duties is specifically "subject to" section 3.2 regarding "Fundamental Actions." *See* Behlman Decl. [Docket No. 1644-1], Ex. G (LLCA Amendment) § 3.1(c).

42. Thus, the Law Firms are not authorized to act for Eletson Gas or its subsidiaries such as EMC Gas.

(3) <u>The Law Firms Are Not Authorized to Act for Eletson Corp.</u>

43. The Law Firms neglect to mention that they are also purporting to act on behalf of Eletson Corp. in the Arrest Proceedings, in pursuing what crew should be appointed to the ships. *See, e.g.*, Ex. 5 (Response to Motion to Release Kithnos Vessel) at 7 ("As discussed during the April 24, 2025 hearing, Claimant is confident that

[14] The LLCA defines "Group Company" as Eletson Gas "and each Subsidiary," and "Subsidiary" is defined as "any Person that is Controlled, either directly or indirectly, by [Eletson Gas], including each Shipco." *See id.* at 8 & 20.

sufficient terms and assurances can be put in place to allow Claimant to continue to operate the Vessel with its current crew."); Ex. 6 (Apr. 24, 2025 Kithnos Hr'g Tr.) at 30:14-20; Ex. 7 (Apr. 17, 2025 Kithira Hr'g Tr.) at 41:205; Ex. 8 (Feb. 25, 2025 Kithira Hr'g Tr.) at 8:1-7; Ex. 9 (Feb. 21, 2025 Kithnos Hr'g Tr.) at 23:5-8. As set forth in the Arrests Motion, Holdings replaced the directors and officers of Eletson Corp., pursuant to Section 5.2(c) of the Plan and paragraph 7 of the Confirmation Order. *See* Arrests Mot. ¶¶ 23-24. Eletson Corp.'s new management never authorized the Law Firms to act on behalf of Eletson Corp. Thus, the Law Firms are clearly frustrating the Plan and Confirmation Order by taking unauthorized actions on behalf of Eletson Corp.

(4) The Court Can, and Should, Compel and Sanction the Law Firms

44. The Law Firms are not authorized to act for Eletson Corp., Eletson Gas or EMC Gas, or any other affiliates or subsidiaries of Holdings. On that basis, alone, the Court can compel the Law Firms to stop purporting to represent those Eletson entities in the Arrest Proceedings. *See* Mar. 12 Decision at 62:9-64:11; *see also* Jan. 24 Decision at 33:9-17; 41:2-15; Feb. 20 Decision at 95:21-96:25. As such, any filings made by them are null and void.

45. Furthermore, how the Law Firms got retained in the Arrest Proceedings, at the direction of the Cypriot Nominees and working with the Former Principals, justifies imposing sanctions on them for violating this Court's clear and conspicuous orders, including the Stay Relief Order (as discussed above), paragraph 5(i) of the Confirmation Order (requiring the Debtors and their Related Parties (defined to include affiliates and subsidiaries and their current and former counsel) to "cooperate in good faith to implement and consummate the Plan"), paragraph 1 of the Consummation Order (restating the obligations in the Confirmation Order), and paragraphs 1 and 2 of the Foreign Opposition Sanctions Order (prohibiting actions that

undermine the recognition of the Confirmation Order).[15] There is no question that these orders apply to the Former Principals, and the Former Principals have not responded to the Arrests Motion. The Law Firms acting at their direction should be compelled to comply with this Court's orders and be subject to sanctions for not doing so. The Law Firms are taking positions adverse to Holdings and its subsidiaries and affiliates, in violation of the Plan and Confirmation Order.

46. Notably, on May 6, 2025, the Texas Court in the Kithira Arrest Proceeding entered an order denying without prejudice the Improper Motion to Vacate the Kithira Arrest, which was improperly sought by the Law Firms at the direction of the Cypriot Nominees. Ex. 10 (Order Denying Improper Motion to Vacate Kithira Arrest) at 1. In doing so, the Texas Court noted that "there are open questions about the ownership of the preferred shares of Eletson Gas that may impact the lawfulness of the arrest" and stated that it would "defer to Judge Liman's ruling on confirmation or vacatur of the JAMS arbitration award." *Id.* In the meantime, the Kithira Vessel remains under arrest, and as such, is not generating revenue for the benefit of Holdings and its subsidiaries and affiliates.

[15] The Law Firm Objection improperly reads "Related Parties" narrowly as Holdings' "*wholly owned and wholly controlled subsidiaries*." Law Firm Obj. at 6 (emphasis in original). But this is not the case. "Related Parties" includes, among other things, "subsidiaries, affiliates." Plan § 1.124. A subsidiary is a corporation in which a parent corporation has a controlling share. Subsidiary Corporation Definition, *Black's Law Dictionary* (12th ed. 2024), *available at* Westlaw. An affiliate is broader and includes entities in which a company owns a minority stake, *see* 11 U.S.C. § 101(2), as the Law Firms have argued Holdings owns in Eletson Gas. Indeed, Eletson's own website refers to Eletson Gas as a "subsidiary." *See* https://eletson.com/wp-content/uploads/2024/07/eletson_corporation.pdf (last visited May 7, 2025). And during the chapter 11 cases, the Debtors have stated that Eletson Gas is a wholly-owned subsidiary of Holdings. *See, e.g.,* Docket No. 298 (Debtors filed Rule 2015.3 reports stating that "Eletson Holdings Inc. holds a substantial or controlling interest in the following entities . . . Eletson Gas LLC); Docket No. 340 (Debtors' Amended Schedules) at 9 (listing 100% of common shares of Eletson Gas LLC as assets of the Debtors); Docket No. 458 (Debtors' DIP Motion) ¶ 11 ("EMC Gas is a non-Debtor subsidiary of non-Debtor Eletson Gas LLC, which, in turn, is a non-Debtor subsidiary of Holdings.").

47. Accordingly, the Court should grant the Arrests Motion.[16]

D. The Reed Smith Motion

(1) The Court Can Compel Reed Smith to Withdraw

48. Reed Smith argues that this Court lacks authority to stop it from representing its purported clients in proceedings not before this Court. *See* Reed Smith Obj. ¶¶ 57-59. But Reed Smith fails to address the basis for the instant motion—*i.e.*, that as a Related Party of the Debtors, Reed Smith is duty-bound to cooperate to implement the Plan and Confirmation Order and, being present in these proceedings, the Court can compel their compliance. *See* Confirmation Order ¶ 5(i); Consummation Order ¶¶ 1-2. In other words, Reed Smith would have this Court ignore the fact that, as a Related Party, it must affirmatively cooperate to help implement the Plan. *Wilson v. United States*, 221 U.S. 361, 376–77 (1911) ("A command to the corporation is in effect a command to those who are officially responsible for the conduct of its affairs. If they, apprised of the writ directed to the corporation, prevent compliance or fail to take appropriate action within their power for the performance of the corporate duty, they, no less than the corporation itself, are guilty of disobedience, and may be punished for contempt."); Fed. R. Civ. P. 65(d)(2) (court orders bind "the parties . . . the parties' officers, agents, servants, employees, and attorneys . . . and other persons who are in active concert or participation with" them); *Hart v. Blanchette*, Case No. 12-CV-6458-CJS, 2019 WL 1416632, at *22 (W.D.N.Y. Mar. 29, 2019) ("It is axiomatic that attorneys must

[16] As set forth in paragraphs 36-42 of the Arrest Motion, the Panama Arrest Proceeding involves one of Holdings' four SMEs and thus, none of the arguments regarding Eletson Gas are relevant in that proceeding. Holdings agreed to extend the objection deadline for the DCR Firm in the Panama Arrest Proceeding to allow it time to rectify its conduct depending on whether the court says that its actions are inconsistent with the Confirmation Order.

comply with court orders and have a responsibility to oversee their clients' compliance.") (collecting cases).

49. Reed Smith's position is also wrong: the Court has the authority to disqualify Reed Smith in other proceedings, especially where ethical violations are present.[17] *See, e.g.*, *In re Adelphia Commc'ns Corp.*, Case No. 04-cv-2192-DAB, 2005 WL 425498, at *4 (S.D.N.Y. Feb. 16, 2005) ("In addition to this broad discretionary power given to courts to disqualify attorneys for ethical violations, bankruptcy courts have broad power to 'issue any orders, process or judgment that is necessary or appropriate to carry out the provisions" of title 11 of the United States Code.") (quoting 11 U.S.C. § 105(a)). For example, in *Adelphia,* the bankruptcy court granted the debtor's motion to disqualify former in-house counsel from representing the debtor's former owners in criminal proceedings pending before another court because of ethical violations involving her use of a prior client's confidential information. *Id.* at *2-3. On appeal, the district court affirmed, and explicitly rejected the former counsel's argument that the bankruptcy court's authority was limited to disciplining attorneys ***in proceedings before it***. *Id.* at *8. As the district court explained:

> Judge Gerber, as the bankruptcy judge overseeing the reorganization of Adelphia . . . was the appropriate judicial officer and perhaps the only one in the position to entertain a motion to disqualify by Adelphia . . . Given the unique set of circumstances in this case, ***and the broad discretionary power granted to courts to discipline attorneys before them, and that given to bankruptcy judges to supervise their***

[17] None of the cases cited by Reed Smith actually support its position that the Court lacks authority to disqualify counsel. *See* Reed Smith Obj. ¶ 57 (citing *Worms v. Rozhkov*, Case No. 20-cv-6422 (LJL), 2021 WL 4124662, at *3 (S.D.N.Y. Sept. 9, 2021) (involving the court's power to *sanction by awarding fees* relating to an appeal because the sanctionable conduct has terminated by the time of the appeal and was not necessary to vindicate lower court's prior orders); *In re Galgano*, 358 B.R. 90, 104 (Bankr. S.D.N.Y. 2007) (involving the court's power to s*anction under 28 U.S.C. § 1927 by awarding fees* to "reach state court conduct that is **totally unrelated to the bankruptcy case**") (emphasis added); *In re Schaefer Salt Recovery, Inc.*, 444 B.R. 286, 299 (Bankr. D.N.J. 2011) (involving the court's power to *sanction by awarding fees*).

> ***proceedings***, the Court finds that the Bankruptcy Court did not abuse its discretion in disqualifying [former in-house counsel].

Id. (emphasis added).

50. Similarly, in *In re Blinder, Robinson & Co.*, the bankruptcy court (a) granted the liquidation trustee's motion to disqualify attorneys who previously served as in-house counsel to the debtor from representing the debtor's parent company and majority shareholders in the bankruptcy case and all related proceedings and (b) enjoined the attorneys and their support staff from revealing the debtor's confidences, secrets, and work product. 123 B.R. 900, 902 (Bankr. D. Colo. 1991). In doing so, the bankruptcy court rejected arguments that it lacked authority to issue a "blanket disqualification" related to "all related proceedings" and that the trustee was required to identify a "specific pending matter, suit, case, or controversy." *Id.* at 912-13. The court noted the attorney's lack of cooperation and combativeness during the cases and found that it would be "absurd to require the trustee to make repetitive motions to disqualify the Attorneys when ***the scope of their prior representation [of the debtor] was patently all-encompassing, pervasive, and inclusive of many areas that the Trustee represented may soon be explored***" in the bankruptcy court. *Id.* at 912 (emphasis added).

51. Reed Smith's attempt to downplay the other cases cited in the Reed Smith Motion misses the mark; they each provide support for the Court's finding of ethical violations as a separate basis to disqualify Reed Smith. *See In re WB Bridge Hotel LLC*, 656 B.R. 733, 747 & 751 (Bankr. S.D.N.Y. 2024) (disqualifying debtor's former counsel from representing debtor's former manager in subsequent avoidance action brought by trustee of liquidating trust, finding that trustee was former client as successor in interest to the debtor and avoidance action was substantially related to

chapter 11 case); *U.S. Football League v. National Football League*, 605 F. Supp. 1448, 1465 & 1468 (S.D.N.Y. 1985) (disqualifying counsel from representing new client in antitrust litigation brought by former client, which was substantially related to work previously done by counsel for former client); *AVRA Surgical, Inc. v. Dualis MedTech GmbH*, Case No. 13-cv-7863 (DLC), 2014 WL 2198598, at *1 (S.D.N.Y. May 27, 2014) (disqualifying counsel from representing client-plaintiff in contract dispute where counsel previously represented plaintiff and defendant as co-clients in negotiating the same contract).

52. Reed Smith conveniently fails to address any of the ethical violations raised by Holdings in the Reed Smith Motion, including acting adverse to its former client, Holdings, and using its confidential information against it. *See, e.g.*, *WB Bridge Hotel*, 656 B.R. at 756-57 ("Allowing a law firm representing a Chapter 11 debtor to later represent individuals who managed the debtor creates an incentive for a firm to play[] fast and loose with its clients [] or turn [] a blind eye to potential conflicts.") (internal citations and quotations omitted). Even the District Court has cast doubt on Reed Smith's ability to represent other parties adverse to Holdings. *See* Ex. 2 (May 6, 2025 S.D.N.Y. Hr'g Tr.) at 46:13-25 ("[I]t seems to me that what you're describing to me is a lawsuit that you might have against the Reed Smith law firm . . . [I]n the ordinary case where the lawyer betrays the confidence of its former client . . . that's what the client would do.").

(2) <u>Reed Smith Should Be Compelled to Withdraw</u>

53. As set forth in the Reed Smith Motion, the Company has terminated Reed Smith from all of its prior representations. *See* Reed Smith Mot. ¶¶ 33-35. Reed Smith does not (and cannot) dispute that it no longer represents Holdings.

54. As for Holdings' affiliates and subsidiaries, Reed Smith takes yet another new and remarkable position that because Provisional Holdings allegedly (and

improperly) controls the Debtors, Holdings cannot replace the officers and directors of its subsidiaries, like Eletson Corp. Reed Smith Obj. ¶ 25 (arguing that Holdings' consents are invalid because the provisional board manages the affairs of Holdings pursuant to the Greek Order). This argument itself demonstrates that Reed Smith is in violation of, and actively trying to undermine, the Confirmation Order. *See* Confirmation Order ¶¶ 5(i), 7. Thus, even under Reed Smith's nonsensical view of the world of there being two separate entities—Reorganized Holdings and Provisional Holdings—Reorganized Holdings validly replaced the members of the boards of its subsidiaries on account of its interests that vested on the Effective Date.[18] The Company's new management has also been confirmed by the District Court. *See, e.g.*, *Eletson Holdings Inc., et al. v. Levona Holdings Ltd.*, Case No. 23-cv-7331-LJL (S.D.N.Y. May 6, 2025), Docket No. 341 (SDNY Memorandum and Order) at 6 ("The only clients that Reed Smith has represented in this proceeding are Eletson Corp. and Eletson Holdings and the Court has determined that Reed Smith may not represent[] either.").

55. As for Eletson Gas, Reed Smith continuing to act for Eletson Gas is not authorized by Eletson Gas and any arguments to the contrary about the composition of the Eletson Gas Board including the members appointed by the Cypriot Nominees violates the Court's Stay Relief Order. Reed Smith's mental gymnastics about the Status Quo Injunction (as defined in the Arbitration Award) are flat out

[18] Reed Smith's argument that Holdings waived its ability to seek disqualification because it waited too long to bring the motion (*see* Reed Smith Obj. ¶¶ 67), is patently absurd. *First*, as set forth in the Reed Smith Motion, Holdings and its subsidiaries had been attempting to communicate with Reed Smith for months about withdrawing to give Reed Smith an opportunity to comply with its obligations and do so. *See* Reed Smith Mot. ¶¶ 33-35. Notably, in the course of these communications, Reed Smith never asserted the argument that it now makes that only Provisional Holdings controls Holdings' interests in its subsidiaries. *Second*, Holdings sought and obtained an order from the District Court displacing Reed Smith as counsel in the Arbitration (Ex. 11 (Feb. 14, 2025 S.D.N.Y. Order, Docket No. 269)) and is currently seeking to displace Reed Smith in the appeal pending in the Second Circuit (Ex. 12 (April 28, 2025 Second Circuit Letter, Docket No. 29) at 1.

wrong (*see* Reed Smith Obj. ¶¶ 33-37): even if the Status Quo Injunction were still applicable (which it is not), it would ***prohibit*** the Preferred Nominees from replacing the Preferred Appointees to the Eletson Gas Board as they purport to have done in the February 2024 Cypriot Nominees' Director Appointment Consent.

56. Finally, as for Provisional Holdings, Reed Smith finally admits that the purpose of the Greek Order was to obtain an extrajudicial stay of this Court's Confirmation Order as a strategic maneuver because it did not seek or obtain a stay of that order in the United States. Reed Smith Obj. ¶ 12 ("The Greek Order was not obtained for purposes of undermining the Plan, but ***to preserve Holdings' right to appeal the Confirmation Decision*** . . . .") (emphasis in original). In doing so, Reed Smith, yet again, admits to its ethical violations: that it accepted a new mandate for a new client—"Provisional Holdings"—for the purpose of being adverse to Holdings and to undermine this Court's orders. That is all that the Court needs to know to compel Reed Smith to cease representing Provisional Holdings upon the substitution of new counsel (as Holdings has previously argued (*see* Docket No. 1566 (Holdings' Objection to Motion to Withdraw) ¶ 20). Disqualifying Reed Smith from representing Provisional Holdings does not deprive anyone of appellate rights as the persons purporting to pursue the rights of Provisional Holdings can do so through new counsel and clear of Holdings' confidential information.[19] New counsel can also inform "Provisional Holdings" and anyone else Reed Smith has been representing to comply with this Court's orders and their obligations under the Plan.[20]

[19] To be clear, Provisional Holdings does not have any appellate rights that belong to Holdings.

[20] Disqualification, moreover, is total in the context of a conflict of interest, meaning Reed Smith would be prohibited from assisting new counsel "behind the scenes." *Rella v. N. Atl. Marine, Ltd.*, Case No. 02-cv-8573 (GEL), 2004 WL 2480409, at *7 (S.D.N.Y. Nov. 3, 2024) ("[W]hen an lawyer or firm is

(3) <u>There is No Basis for a Stay</u>

57. The Court should decline Reed Smith's invitation to stay the Reed Smith Motion pending resolution of certain issues before the Second Circuit. Reed Smith Obj. ¶¶ 42-52, 59. Holdings agrees that "the District Court and Second Circuit have before them a pipeline of largely overlapping appeals." *Id.* ¶ 49. This is because of the meritless scorched earth litigation tactics of Reed Smith, its true clients, and the Former Shareholders to frustrate implementation of the Plan. This Court should not condone those actions by allowing further delay of the issues pending before it. As has been discussed over and over, for whatever reason Reed Smith made the decision not to seek a stay pending appeal of the Confirmation Decision. The consequence of that decision is well known. *See, e.g.,* Docket No. 1448, Ex. B (Feb. 14, 2025 S.D.N.Y. Hr'g Tr.) at 40:7-12. Indeed, Reed Smith itself requested that reference to Bankruptcy Rule 3020(e) be added to the Confirmation Order. Bankruptcy Rule 3020(e) exists for the purpose of providing sufficient time for parties to seek a stay pending appeal prior to implementation of a plan rendering the appeal moot. Fed. R. Bankr. P. 3020, Committee Notes (1999 Amendment) ("Subdivision (e) is added to provide sufficient time for a party to request a stay pending appeal of an order confirming a plan under . . . chapter 11 of the Code before the plan is implemented and an appeal becomes moot.").

58. Yet, Reed Smith did not seek a stay and instead choose to try and create an extrajudicial stay through obstruction overseas, as they finally admit.

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disqualified for laboring under a conflict of interest and actually or potentially possessing privileged information belonging to the adverse party, such disqualification is complete and permits no participation of the disqualified lawyer or firm in the representation of his or its new client.") (citation omitted).

59. In its discussion of the case law regarding a court's discretion to impose a stay of proceedings in the non-bankruptcy context, Reed Smith omits from the very cases that it cites that it both (a) "bears the burden of establishing its need for such a stay" and (b) "[i]n particular, if there is even a fair possibility that the stay for which he prays will work damage to someone else," Reed Smith "***must make out a clear case of hardship or inequity in being required to go forward***." *LaSala v. Needham & Co.*, 399 F. Supp. 2d 421, 427 (S.D.N.Y. 2005) (emphasis added). As Provisional Holdings has not even attempted to meet the "hardship or inequity" standard, the Court can decline to grant a stay on that basis alone.

60. In fact, courts have found that any "undue hardship or prejudice" is a basis to deny a stay. *See In re South Side House, LLC*, 470 B.R. 659, 685 (Bankr. E.D.N.Y. 2012) ("[A] stay may be appropriate to promote judicial economy, or to avoid confusion and possible inconsistent results, but only if it will not cause 'undue hardship or prejudice against the plaintiff.'") (citations omitted). The cases that Reed Smith cites in its objection are not to the contrary (*see* Reed Smith Obj. ¶ 47) because in all instances where the court granted a stay, it also found no prejudice to the plaintiff.

61. Holdings will suffer damage, hardship, and inequity as it continues to incur substantial costs to implement the Plan and ***unstayed*** Confirmation Order (and other orders of this Court) while it has not received the benefit of the bargain of its reorganization. Worse, the limited bank records that Holdings has been able to obtain to date show funds being paid to Reed Smith without the Company's consent. *See supra* ¶ 27.

62. As for the balancing of the *Kappel v. Comfort* factors relied upon by Reed Smith, all of them support denying the requested stay because of the prejudice that will be suffered by Holdings: (1) Holdings' interests in effectuating the Plan and

Confirmation Order outweigh any prejudice to Provisional Holdings if delayed; (2) the interests of, and burden on, Provisional Holdings from a stay is minimal as Provisional Holdings did not seek a stay and chose the existing path; (3) the interests of other parties is furthered by having clarity on these issues from this Court; and (4) the interests of the Court and the public interest is furthered in having this Court enforce its prior decisions while appeals of its unstayed orders are pending. 914 F. Supp. 1056, 158 (S.D.N.Y. 1996).

63. All that remains is Reed Smith's disingenuous plea for "judicial economy." Reed Smith Obj. ¶¶ 46, 48-50. Far from obtaining "judicial efficiency," the stay Reed Smith requests, if granted, would grind these proceedings to a halt and effectively provide them with the stay of the unstayed Confirmation Order that it admits was the true purpose of the Greek Order and tactical maneuver to not seek a stay in the United States. Reed Smith Obj. ¶ 12; *see also Wilson v. Wexford Med.*, Case No. 18-CV-00890, 2020 WL 930112, at *2 (S.D.W. Va. Feb. 26, 2020) (rejecting the defendants' "backdoor approach to staying the original order by moving to stay the second order" compelling past-due compliance with the original order as futile, noting: "Even if Defendants' Motion to Stay is granted . . . that stay would not stay the [original] Order, which remains in effect"); *Carter v. Transp. Workers Union of Am., Loc. 556*, Case No. 17-CV-2278-X, 2023 WL 7273739, at *7 (N.D. Tex. Aug. 31, 2023) (denying stay motion: "Southwest wants to back-door a stay of the Court's injunctions by staying the contempt order. It's too late for that . . . The flight attendants are protected by an injunction . . . Staying any further portion of the judgment only serves to continue the confusion Southwest has sown.").

64. Accordingly, the Court should grant the Reed Smith Motion.

E. Miscellaneous Other Objections

65. Elafonissos argues in its objections to the Motion to Amend (Former Shareholders Obj. ¶¶ 20-21) and Fees and Costs Motion (Former Shareholders Obj. ¶¶ 11-12) that the Court lacks jurisdiction over it by referring to its same arguments from its motion to reconsider the Foreign Opposition Sanctions Order and the January 29 Decision [Docket No. 1569] (the "Rule 9024 Motion").[21] As set forth in Holdings' objection to the Rule 9024 Motion [Docket No. 1622] (the "Rule 9024 Objection"), the Court has jurisdiction over Elafonissos. *See* Rule 9024 Obj. ¶¶ 47-66.

[Concludes on following page]

[21] At the April 30, 2025 hearing, the Court took the Rule 9024 Motion under advisement. As of the date hereof, the Court has not issued a decision with respect to the Rule 9024 Motion, which remains pending.

CONCLUSION

For the foregoing reasons, the Court should overrule the Objections and grant the Motions.

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