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June 1, 2025

Via ECF

Honorable John P. Mastando
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004

Re: *In re Eletson Holdings, Inc., et al.*, Bankr. S.D.N.Y. 1:23-bk-10322 (JPM)

Dear Judge Mastando:

Pursuant to this Court's order concerning Reed Smith's representation of interested party Provisional Eletson Holdings, Inc. ("Provisional Holdings"), we write in connection with the *Order to Show Cause for Entry of an Order Authorizing and Directing Microsoft Corporation to (I) Suspend Existing Account Access for Account Maintained by Eletson Corporation and (II) Provide Administrator Level Account Access to Eletson Holdings, Inc. and Its Designee* (Dkt. 1673) ("Order to Show Cause"), the accompanying memorandum of law (Dkt. 1674) and *Declaration of Kyle J. Ortiz Pursuant to Local Bankruptcy Rule 9077-1* (Dkt. 1675) ("Ortiz Decl."). Provisional Holdings objects to the Order to Show Cause as well as the accompanying papers and wishes to address certain issues ahead of the June 2, 2025 hearing scheduled for 4:30 p.m. Respectfully, the undersigned will not be available for the hearing due to a Jewish holiday, which is why we are submitting this letter now, on Sunday.

On the substance of the allegations against Provisional Holdings, we note that, as a result of Reorganized Holdings' arrest of the M/T *Kinaros*, which Provisional Holdings asserts was unlawful, Provisional Holdings no longer has access to the vessel or its computer system and cannot investigate Reorganized Holdings' claims. Nevertheless, management of Provisional Holdings has no knowledge of any information being deleted or "wiped" from any systems on the *Kinaros*. Provisional Holdings has advised us that, having checked with competent IT personnel, Provisional Holdings did not delete or "wipe" any of the systems on the *Kinaros*. There is in fact no emergency here.

It appears that, having encountered unanticipated difficulties in trying to swap out the management of the vessel by having the vessel arrested in a foreign port and its crew displaced, Reorganized Holdings now seeks to use those self-inflicted difficulties as a pretext to urge this Court to act immediately, without the time needed to develop the factual record or even to explore the scope or effect of the relief sought. We submit that the Court should at the very least vacate the Order to Show Cause and convert Reorganized Holdings' application into a normal motion, to be fully briefed and argued on a reasonable schedule, rather than over a weekend with the hearing on a religious holiday.



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The Issue Underlying the Order to Show Cause is Exactly the Issue Presently Before the Second Circuit and Subject to the Second Circuit's Stay

Reorganized Holdings is attempting to use the Order to Show Cause and the accusation of improper (and at a minimum disputed and unproven) conduct to gain access to all Eletson information systems and communications. This is nothing more than an improper effort to obtain access to material including that which is at issue in the appeal pending before Second Circuit and that is subject to the temporary stay of the District Court's turnover order. *See Eletson Holdings, Inc., et al. v. Levona Holdings Ltd., v. Reed Smith LLP*, No. 25-445 (2d Cir.), ECF 49.1. This Court should not permit Reorganized Holdings to circumvent that stay. *See In re Strawberry Square Assocs.*, 152 B.R. 699, 701 (Bankr. E.D.N.Y. 1993) (a bankruptcy court may not exercise jurisdiction over issues which "so impact those on appeal as to effectively circumvent the appeal process"); *see also In re Southold Development Corporation*, 129 B.R. 18, 21 (Bankr. E.D.N.Y. 1991) ("the bankruptcy court in the case at bar was divested of jurisdiction regarding issues on appeal, as well as matters undeniably related to issues on appeal"); *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) ("The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.").

More fundamentally, the Order to Show Cause presents the question of who controls Eletson Holdings: Reorganized Holdings or Provisional Holdings. We recognize that this Court has already expressed its opinion on how that question should be answered, but Provisional Holdings has challenged that ruling in its pending appeal to the Second Circuit, *In re: Eletson Holdings Inc., et al.*, No. 25-176 (2d Cir.), and the appeal of this Court's January 29, 2025 Order (Dkt. 1420). *See* Dkt. 1411, Dkt. 1456 (Statement of Issues on Appeal) ("Whether the Bankruptcy Court, in issuing the January 29, 2025 Order, improperly determined that the Disclosure Statement, Plan, and Confirmation Order did not require recognition of the Plan in Liberia and Greece."); *Eletson Holdings Inc., et al. v. Reorganized Eletson Holdings Inc.*, No. 25-01312-LJL (S.D.N.Y.). While that issue is before the appellate courts, this Court cannot and should not rely on its prior ruling in issuing further orders. "An appeal, including an interlocutory appeal, 'divests the district court of its control over those aspects of the case involved in the appeal.'" *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740 (2023) (quoting *Griggs*, 459 U.S. at 58).

The Relief Requested Ignores the Lack of Recognition in Greece of the Plan and Confirmation Order

The Court is already familiar with the foreign recognition proceedings currently pending in Greece. To date, no Greek court has recognized or enforced the Confirmation Order. Indeed, under Greek law, which adopts the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency, the Plan for Holdings (whose Center of Main Interest is in Greece) must be recognized in Greece before it becomes effective—just as the Plan promised would be accomplished. *See* UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation, Art. 17, <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/insolvency-e.pdf>. In fact, and significant here, Greece has thus far declined to recognize the reorganization of Holdings and has declined to recognize Adam Spears as Reorganized Holdings' representative in Greece (Dkt. 1410, Ex. A ¶¶ 10-11 & Ex. A; Dkt. 1590, Ex. A ¶¶ 6-7)). As relevant here, Greece maintains a critical interest in who manages vessels operating under the *Greek flag*—such as the *Kinaros*—which must at all

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times comply with Greek law, and which are subject to Greek regulations concerning vessel and crew safety, navigation, and operations.

The Court is also aware that Provisional Holdings is subject to the order of a Greek court directing Provisional Holdings to oversee and manage the operations of the vessels at issue, and imposing upon Provisional Holdings the responsibility for those vessels. The relief requested in the Order to Show Cause would impermissibly override Greece's interests and the effect of the Greek court orders. *See* Restatement (Third) of the Foreign Relations Law (the "Restatement (Third)"), Part IV ch. 1, introductory note ("International law has long recognized limitations on the authority of states to exercise jurisdiction to prescribe in circumstances affecting the interests of other states."); *Usayan v. Republic of Turk.*, 6 F.4th 31, 48 (D.C. Cir. 2021) ("Comity can . . . be described as a golden rule among nations—that each must give the respect to the laws, policies and interests of others that it would have others give to its own in the same or similar circumstances."). There is no question that "suspend[ing] . . . all Old Accounts" as requested in the Order to Show Cause (Dkt. 1673 at 2) would require actions to take place *in Greece* and would directly impact the continued operations of Holdings, Eletson Corporation and its affiliates (as well as its vessels) *in Greece*. The Court should decline to grant such extraordinary relief given that Reorganized Holdings has yet to obtain recognition and enforcement of the Confirmation Order in Greece.

The Scope of the Relief Requested is Vastly Overbroad

Even if the request in the Order to Show Cause were otherwise proven and appropriate, the relief sought appears to be impermissibly overbroad. The Proposed Order that Reorganized Holdings seeks to have entered would direct Microsoft to "(i) suspend[] ***all existing user accounts . . . of the former management and employees of the Debtors and their affiliates and subsidiaries . . . operating under the name Eletson . . . and any of Holdings affiliates or subsidiaries*** maintained by Microsoft on its business-related applications, data platforms, and cloud-based computing services, among other types of services" (Dkt. 1673 at 2-3) (emphasis added). On its face, this would cut off or restrict computer access for employees throughout the entire Eletson enterprise, including employees responsible for the operation and management of vessels at sea, which could interrupt their ongoing voyages and ***directly interfere with the safety of those vessels and their cargo and crews***. This could be dire, and the Court should not assist Reorganized Holdings absent very specific proof that the safety of the crews will not be directly compromised. Furthermore, as written, the order would seem to reach employees of ***non-debtor Eletson Gas LLC ("Gas") and its subsidiaries***. For the reasons stated in various filings with this Court, not only does the Court lack jurisdiction to direct such actions against non-debtor entities, such as Gas, Holdings does not and cannot control Gas or its operations (*see, e.g.*, Dkt. 1587, 1640, 1645, 1649). At the very least, the Court should withhold the grant of this relief pending a showing of the precise effect of such a broad "suspension" on the ongoing business activities of the affected entities, and should ensure that the relief granted is appropriately tailored to avoid interfering with ongoing operations.

Respectfully submitted,



Louis M. Solomon

cc. Counsel of Record