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through partnership

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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:

We write on behalf of Provisional Holdings and Reed Smith, LLP to respond to Reorganized Holdings' Letter last evening (Dkt. 1706). Your Honor should reject Reorganized Holdings' most recent attempt to lead this Court into serious legal error. Reorganized Holdings can be blithe about the Second Circuit's ruling, but Your Honor cannot. That ruling completely undermines two pillars of Murchinson's gameplan:

First, the Second Circuit has rejected the simplistic assumption, made in ever-increasing volume by Reorganized Holdings, that Provisional Holdings has no right to be heard and can be held in contempt for asserting the rights that Provisional Holdings maintains it was given by express representations in the Plan and by operation of the law of international comity. We respectfully recognize that Your Honor has expressed views on that subject, and it is those views that are going to be tested on the merits on the appeals in the Circuit. In the meantime, it is Reorganized Holdings, according to the Second Circuit, that is "*purporting* to represent Eletson Holdings and Eletson Corporation". The Circuit will decide that issue, and it is a serious question for Your Honor as to how, as a practical, pragmatic matter, these proceedings should be conducted pending decision by the Circuit. Your Honor should direct the parties promptly to submit position statements on that issue.

Second, on the specific issue of "protecting the privileged property at issue" (Dkt. 1705, Ex. A at 2), the Circuit was brief but exceedingly clear. Citing *Nken v Holder*, 556 U.S. 418, 434 (2009), the Court granted the stay motion made by Reed Smith. That stay motion involved the entire client file of documents of its clients, including Provisional Holdings, Corp, and Gas. By citing *Nken* with the reference to "discussing stay factors," the Second Circuit found that Appellant had satisfied the standard for a stay:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay;
- (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.



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Nken, 556 U.S. at 434 (quotations omitted). That “strong showing” of likelihood of success on the merits thereby found by the Second Circuit is with respect to an appeal that includes the right not to turnover *any* documents, since Reed Smith has a lien on those documents and because at least some of those documents are *privileged*. The Second Circuit is trusting that this Court will protect those documents. The Microsoft Order is wholly violative of the protection of those documents. To the extent any party or counsel receives or maintains any of those documents, they are knowingly and contemptuously violating the Second Circuit stay. To the extent any party or counsel reviews or benefits directly or indirectly from any privileged document, the contempt is not only willful, it will lead to the disqualification of that counsel and his firm. We are fully reserving our clients’ rights, claims, objections, and defenses and ask Your Honor immediately to vacate or stay the Microsoft Order.

Respectfully submitted,



Louis M. Solomon

cc. Counsel of Record