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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. [2]	:	

JOINT POST-TRIAL BRIEF OF THE PETITIONING CREDITORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS REGARDING CONFIRMATION OF THE COMPETING PLANS

[1] The "Petitioning Creditors" consist of Pach Shemen LLC, VR Global Partners, L.P., Alpine Partners (BVI), L.P., Gene B. Goldstein ("Goldstein"), 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 PC Plan and the PC Alternative Plan.

[2] 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.

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The Petitioning Creditors and the Committee hereby submit this post-trial brief regarding confirmation of the Competing Plans.[3]

PRELIMINARY STATEMENT

1. The record at trial established that only one plan—the PC Plan—is confirmable as a matter of law. The PC Plan complies with section 1129(a) of the Bankruptcy Code. It also was accepted by all impaired classes, thus avoiding application of the cramdown requirements under section 1129(b), although those requirements easily would be met as well. In addition, the PC Plan was overwhelmingly favored by voting creditors, as reflected in the voting records introduced at trial. The Court does not need to break any new ground to confirm the PC Plan.

2. On the other hand, confirming the Debtors' Plan would require radical departures from accepted restructuring practice, including the Supreme Court's decisions in *Ahlers* and *LaSalle* and the Second Circuit's decision in *Coltex*. To confirm the Debtors' Plan, this Court would need to cram down a shareholder new value plan that is not necessary (due to the presence of superior alternative financing), accept "new value" consideration that is not "new" (*i.e.*, SME Revenue and SME Excess Proceeds) or that consists of speculative future value from litigation (*i.e.*, the Collections Contribution), and overrule all other objections under bedrock principles of bankruptcy law (*e.g.*, the absolute priority rule, feasibility, good faith, gerrymandering, and unfair discrimination). And even if the Court were to do all that, the Court then would need to

[3] "Competing Plans" refers to (a) the *Petitioning Creditors' Amended Joint Chapter 11 Plan of Reorganization of Eletson Holdings Inc. and its Affiliated Debtors* [ECF 1132] (the "PC Plan"), (b) the *Petitioning Creditors' Alternative Chapter 11 Plan for Eletson Holdings Inc. and its Affiliated Debtors* [ECF 1131] (the "PC Alternative Plan" and, together with the PC Plan, the "PC Plans"), and (c) the *Second Amended Joint Plan of Reorganization of Debtors Under Chapter 11 of the United States Code (as Further Modified*) [DX-336] (the "Debtors' Plan"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the applicable Competing Plan. The Committee's and Petitioning Creditors' joint trial exhibits and the Debtors' trial exhibits are cited herein as "CRX-__" / "CX-__" and "DX-__," respectively.

disregard the votes of the creditor body, which overwhelmingly voted to accept the PC Plan and reject the Debtors' Plan.

3. The Court should reject the Debtors' invitation to disregard the Bankruptcy Code and creditor votes in that manner. The Debtors' scattershot assertions of purported "bad faith"—most of them involving prepetition alleged conduct of parties other than the PC Plan proponents having nothing to do with any of the plans that are before the Court—do not support assessing the plans that have been presented in anything but the ordinary way. The Court should apply the established principles of the Bankruptcy Code, follow the controlling decisions of the Supreme Court and the Second Circuit, respect the will of the creditor body, and confirm the PC Plan.

I. THE PC PLAN CAN AND SHOULD BE CONFIRMED.

4. The record established that the PC Plan is confirmable because it satisfies section 1129(a) of the Bankruptcy Code, including, without limitation, section 1129(a)(3) . *See infra* ¶¶ 37-48. In addition, the PC Plan was accepted by all impaired classes of claims entitled to vote and was overwhelmingly preferred by creditors entitled to make a preference.

II. THE DEBTORS' PLAN CANNOT BE CONFIRMED.

A. The Debtors' Plan Cannot be Crammed Down on Creditors

5. As set forth below, as well as in the objections to the Debtors' Plan filed by the Petitioning Creditors [ECF 1027] (the "PC Objection") and the Committee [ECF 1030] (the "UCC Objection" and, together with the PC Objection, the "Objections"),[4] the Debtors' Plan violates the absolute priority rule, and cannot be crammed down because it is not "fair and equitable" as required under section 1129(b)(2)(B)(ii) .[5]

[4] The 2022 Notes Trustee filed a joinder to the UCC Objection [ECF 1031].

[5] The PC Plan does not have such issues even if the Court were to disallow Pach Shemen's claims despite the Debtors' articulating no legal theory for doing so. Without Pach Shemen's claims, the PC Plan would simply need to satisfy cramdown, which it can easily do. The PC Plan is fair and equitable as no junior classes are

i. The Shareholder New Value Contribution is Not "Necessary"

6. For the Shareholder New Value Contribution to be "necessary," the Debtors would need to demonstrate that "***no other source of capital is available***." *Coltex Loop Cent. Three Partners, L.P. v. BT/SAP Pool C Assoc*., 138 F.3d 39, 45 (2d Cir. 1998) (emphasis added) (citations and quotations omitted). They cannot do so, however, because the Petitioning Creditors are willing to fund the Debtors' reorganization through either the PC Plan or the PC Alternative Plan, and both plans provide more new money than under the Debtors' Plan—$53.5 million under the PC Plan (for 75% of the Reorganized Debtors with a new money valuation of $70.7 million) (*see* PC Plan, Art. I.a.1.126), or $41 million under the PC Alternative Plan (with a new money valuation of $41 million) (*see* PC Alternative Plan, Art. IV.A.1).

7. Moreover, both the PC Plan and the PC Alternative Plan provide for greater returns to creditors than the Debtors' Plan.

- Under the PC Plan, creditors are anticipated to receive (a) up to $10.8 million in cash through the GUC Cash Pool and the Convenience Class[6] *plus* (b) 100% of the equity in the Reorganized Debtors (which includes all SME value) through (i) 25% of the new equity on account of claims that elected to receive equity and (ii) 75% of the new equity available for purchase through the rights offering. *See* PC Plan, Art. I.a.79; Art. I.a.38; Art. I.a.126; *see also* CRX-267 (Cordasco Report) at 16.

- Under the PC Alternative Plan, creditors are anticipated to receive (a) $6.7 million in cash on account of (i) the Corp Guaranty Claim recovery ($3 million), (ii) the Azure Guaranty Claim recovery ($200,000), (iii) the Trade Creditor Claims recovery (approx. $410,000), and (iv) the Noteholder Election Recovery ($3.1 million) plus (b) the Litigation Trust Interests that contain the same SME Revenue / SME Excess Proceeds contributions as under the Debtors' Plan. *See* PC Alternative Plan, Art. I.B.13; Art. I.B.171; Art. I.B.118; Art. II.C.2; Art. II.C.3; Art. II.C.4; Art. II.C.5; Art. II.C.6; Art. II.C.7; *see also* CRX-267 (Cordasco Report) at 16.

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retaining any property and it does not discriminate unfairly as all general unsecured creditors receive the same treatment. *See* 11 U.S.C. §§ 1129(b)(2)(B)(ii) & (b)(1) .

[6] The PC Plan provides for an estimated cash recovery of $9.1 million, plus up to an additional $1.7 million depending on the amount of Professional Fee Claims and DIP Claims. *See* PC Plan, Art I.a.79.

8. In contrast, under the Debtors' Plan, creditors receive just (a) $3.8 million in cash on account of the Corp Guaranty Claim Recovery ($1 million), the Azure Guaranty Claim Recovery ($200,000), the Trade Creditor Claims recovery (approx. $410,000), and the Noteholder Election Recovery ($2.2 million)[7] plus (b) the Litigation Trust Interests that entitle the holders thereof to receive ***a portion of the future value of the SMEs determined by the Debtors*** rather than 100% of the value of the SMEs like under the PC Plan. *See* Debtors' Plan, Art. I.B.12; Art. I.B.41; Art. I.B.103; Art. I.B.111; Art. I.B.160, Art. II.C.2; Art. II.C.3; Art. II.C.4; Art. II.C.5; Art. IV.H-J. The Debtors argued at trial that creditors would receive greater value under the Debtors' Plan than under the PC Plan through the contribution of the contingent, future SME Revenue / SME Excess Proceeds to the Litigation Trust. *See* 9/11/24 Hr'g Tr. 15:18-23; 9/13/24 Hr'g Tr. (Furchtgott-Roth) at 124:2-13; DX-047 (Furchtgott-Roth Report) ¶ 86. Putting aside that SME revenue is, by definition, not new value, the Debtors are incorrect.[8] Under the PC Plan, creditors receive 100% of the value of the SMEs, *i.e.*, all of the SMEs' revenue, whereas under the Debtors' Plan, creditors only receive a portion.

9. Also, as discussed below (*see infra* n.15), the Debtors took no meaningful steps to pursue alternative financing for their Plan.

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[7] The Debtors' own witnesses and experts are inconsistent on the amount of cash payable to creditors. Mr. Hadjieleftheriadis testified that the total cash payable to creditors is $3.8 million "on day one," which testimony referenced Mr. Nolletti's feasibility analysis. 9/11/24 Hr'g Tr. (Hadjieleftheriadis) at 184:19-185:21. Mr. Nolletti's report, however, states this figure as $2.8 million (DX-337) and at trial was unable to explain the difference between these two figures (*see* 9/12/24 Hr'g Tr. (Nolletti) at 214:22-215:16. The issue apparently relates to the cash payable to Noteholder Election Recovery Claims, which FTI estimates as $2.2 million while Mr. Nolletti estimates as $1.2 million. *Id.*

[8] The SME Revenue / SME Excess Proceeds is not "new value" because it is coming from the Debtors' four SMEs, which are clearly within the Debtors' corporate structure (*see, e.g.,* CX-130) and already belong to the Debtors (and their creditors). In their amended plan filed the night before the confirmation trial, the Debtors revised the definition of "Distributable Cash" to include SME Revenue (Debtors' Plan, Art. I.B.57), and at trial, argued, without support, that this SME Revenue could be up to another $1 million for creditors. 9/11/24 Hr'g Tr. (Statement of L. Solomon) at 15:18-23. However, even the Debtors' counsel recognized this is not "new value." *Id.* at 15:12-23.

ii. The "Collections Contribution" is Not "New Value"

10. The Collections Contribution is a contingent future payment that depends on what, if anything, the Gas Ownership Defendants might collect from Levona under the Arbitration Award, less deductions for undisclosed costs and setoff. *See* CRX-236 (Debtors' Am. Plan), Art. I.B.29. As a matter of law, this is not "new value" because it is not money or money's worth. *See* PC Obj. ¶¶ 35-36.

11. As a matter of fact, the Debtors provided no evidence—whether by fact witnesses or experts—of what the Collections Contribution is worth. Instead, the Debtors speculated that it "may" be worth $50 million. DX-269 (Hadjieleftheriadis Decl.) ¶ 54; *see also* DX-271 (Kertsikoff Decl.) ¶ 91. But they also admitted that the Collections Contribution could be $30 million (9/11/24 Hr'g Tr. (Hadjieleftheriadis Testimony) at 160:7-161:10) or as little as zero (*id.* at 192:3-6). The Debtors simply did not know how much would be collected. *Id.* at 191:12-192:6. The Debtors' expert, Dr. Furchtgott-Roth, even admitted that there was "no certainty" that the Collections Contribution would ever be collected. 9/12/24 Hr'g Tr. (Furchtgott-Roth Testimony) at 116:25-117:13. Moreover, the value available from Levona to enforce any award is questionable, and the freezing order entered by the British Virgin Islands Court and relied upon by the Debtors at trial [redacted]. DX-340. Nor did the Debtors offer any evidence of the collection costs, which would be deducted from what is recovered from Levona (if anything) before any contribution is made.

12. The Debtors also have admitted that they do not know when the Arbitration Award will be collected, if ever. *See* 9/3/24 Dep. Tr. (Hadjieleftheriadis) at 168:1-11; 9/11/24

Hr'g Tr. (Hadjieleftheriadis) at 161:11-16, 162:12-14. As this Court is aware, Judge Liman issued a decision on September 6, 2024, allowing Levona to amend its motion to vacate the Arbitration Award and conduct discovery into whether Eletson procured the award by fraud. CRX-60 (Opinion and Order) at 1, 47. After the trial, on September 18, 2024, Judge Liman approved a schedule (the "Scheduling Order") under which Levona will conduct that discovery through the middle of January 2025, with briefing on the amended motion to vacate the award going through the end of February 2025.[9] Dr. Furchtgott-Roth was right—the Arbitration Award (*i.e.*, the Collections Contribution) is pure speculation. At a minimum, the Collections Contribution will not be available on the effective date of the Debtors' Plan, as the Debtors admitted, if it is ever available at all. 9/11/24 Hr'g Tr. (Hadjieleftheriadis) at 161:17-21.

13. Even if there may be some future "value" to the Collections Contribution, there are numerous reasons it does not qualify as Shareholder "new value." The contribution from Eletson Gas, whose common stock is 100% owned by Debtor Eletson Holdings (*see* DX-269 (Hadjieleftheriadis Decl.) ¶ 15), is from inside the Debtors' corporate structure—thus, it is not "new." In addition, there is no evidence that Eletson Gas agreed to the Collections Contribution or that Eletson Gas will actually make the contribution, assuming the Arbitration Award is ever collected. Rather. Mr. Hadjieleftheriadis claimed only that the Eletson Gas officers and directors are "aware" of this provision, but could not identify who agreed to it or whether the Eletson Gas board ever formally approved it. 9/11/24 Hr'g Tr. (Hadjieleftheriadis) at 157:24-159:16. Instead, the purported Preferred Shareholders purportedly agreed that they would cause Eletson Gas to make the contribution, but there is no evidence they had authority to do so. 9/11/24 Hr'g Tr. (Hadjieleftheriadis) at 156:13-158:7; *see also* DX-269 (Hadjieleftheriadis Decl.) ¶ 51. Thus,

[9] A copy of the Scheduling Order is attached hereto as **Exhibit A**.

there are serious questions as to whether Eletson Gas (or any of the Gas Ownership Defendants) will actually make the Collections Contribution, and Eletson Gas is bound at all. CRX-120 (Eletson Gas LLC Agreement) § 3.2 & Schedules VI-VII (requiring four board member approval for "Fundamental Actions").[10] Similarly, the Debtors have put forth no evidence (*i.e.,* written agreements, resolutions, or otherwise) that the purported Preferred Shareholders agreed to make the Collections Contribution or that the Debtors' principals have any authority to bind the purported Preferred Shareholders or Eletson Gas.[11]

14. Finally, the Debtors' and their Shareholders' attempted use of the Arbitration Award violates the Court's stipulated stay relief order. *See* CX-123 (Stay Relief Order). That order permitted the Arbitration to continue "solely to the extent necessary and for the sole purpose of permitting a trial . . . and a final determination or award to be made by the Arbitrator, ***including any appeals***" (Stay Relief Order ¶ 3 (emphasis added)), and stayed "[a]ny Arbitration Award, whether in favor of any Arbitration Award" and provided that "no Arbitration Party shall transfer, dispose of, transact in, hypothecate, encumber, impair or use any such Arbitration Award or any asset or property related thereto absent further order of this Court" (*id.* ¶ 4). The confirmation proceedings before Judge Liman are at least five months away (if not longer) from completion and the appeals process has not even begun.

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[10] Eletson Gas and the other Gas Ownership Defendants, including the purported Preferred Shareholders, have not expressly agreed to be subject to the jurisdiction of the Court raising issues about enforcing this provision if breached. In a prior version of the Debtors' Plan that contained a somewhat similar "Gas Ownership Claims Settlement," Debtors' counsel stated that if the Gas Ownership Defendants did not contribute their amounts to that settlement, the Litigation Trust would have to sue them. CRX-26 (5/15/24 Hr'g Tr.) at 34:18-22.

[11] As this Court is aware, the Eletson Gas Defendants' entitlement to any portion of the Arbitration Award that is now purportedly "new value" is highly contested—not only in the District Court, but also in this Court. The Debtors sought to transfer that award to the Eletson Gas Defendants during these cases, for no consideration, and with the clear intent of placing the award outside the estate. As this Court observed, the issue of whether that and other transfers of value give rise to "a potential preference, fraudulent transfer, or other claim" on behalf of the Debtors' estates "remains a live issue in these cases." ECF 721 (order on trustee motions) at 33-34; *see also id.* at 36 (describing transfer of "damages or attorney's fees" as "potentially problematic").

B. The Debtors' Plan is Not Feasible

15. At trial, the Debtors failed to prove that (i) the proposed $37 million funding under the Debtors' Plan is sufficient to satisfy all the payment obligations under the plan to go effective, and (ii) the Shareholders actually have, or will have, the $37 million in cash to fund the plan. As such, the Debtors have not shown that their plan has a reasonable likelihood of success. *See* UCC Obj. ¶ 52 (citing *Kane v. John Manville Corp.*, 843 F.2d 636, 649 (2d. Cir. 1988) (under section 1129, a plan must have a "reasonable assurance of success.")); PC Obj. ¶ 44.

a. The Debtors Have Not Shown that $37 Million Is Sufficient to Fund the Likely Emergence Costs

16. The evidence at trial showed that the required cash distributions under the Debtors' Plan and reasonably anticipated administrative claims will leave the Debtors' Plan at substantial risk of being underfunded. Specifically:

- The Committee's financial advisor and expert, Michael Cordasco, performed an independent analysis and determined that the likely plan distributions and payments for administrative claims will total approximately $44.4 million (representing an implied shortfall of up to $7.4 million when accounting for the revised $37 million Shareholder New Value Contribution). *See* CRX-267 (Cordasco Report) at 7, 11.

- The Debtors' expert, David Nolletti, performed no independent analysis of the likely administrative claims required to be paid at emergence and relied solely on filed claims or assumptions given to him by counsel. *See* 9/12/24 Hr'g Tr. (Nolletti) at 198:24-199:10; 201:4-14; 231:7-22; 234:14-235:22; 268:14-25; 274:11-19. Mr. Nolletti did not consider that administrative claims or professional fee claims would be any different than that set forth precisely in his report, and did not perform any sensitivity analyses. *Id.* at 199:14-18; 201:19-23.

- Mr. Nolletti assumed that the Debtors would emerge from bankruptcy in September 2024 and did not estimate any fees for October 2024. *Id.* at 204:2-14. With post-trial briefing due September 20, and the likelihood that parties will appeal no matter which plan is confirmed, the company will likely emerge from bankruptcy in October at the earliest. The projected professional fees therefore are likely severely understated, and the administrative claims will likely increase significantly from those projected.

17. The Debtors' assumptions regarding additional administrative claims, including substantial contribution claims by the Petitioning Creditors (and others), are unreasonable in

light of the evidence. *See In re Lakeside Glob. II, Ltd.*, 116 B.R. 499, 507 (Bankr. S.D. Tex. 1989) ("Where the financial realities do not accord with the proponent's projections or where the proposed assumptions are unreasonable, the plan should not be confirmed."). Mr. Nolletti performed no independent analysis of the likelihood that any portion of the administrative claims asserted by Togut Segal & Segal LLP, Wilmington Savings Fund Society, or New Agathonissos Finance would be allowed. Instead, he assumed they are zero. *See id.* at 233:23-235:22. Mr. Nolletti also took no steps to consider whether any other administrative claims might be filed in these cases. *Id.* at 199:25-200:9.[12] Without making any findings regarding whether the Petitioning Creditors are entitled to any substantial contribution claims, the Court can find that there is a reasonable likelihood that such claims may be greater than zero:

- Each of the Debtors' principals acknowledged that the Shareholders increased their contribution in response to the higher consideration offered under the PC Plans. *See* DX-271 (Kertsikoff Decl.) ¶ 92; DX-269 (Hadjieleftheriadis Decl.) ¶ 50.

- The Court's order approving the Rights Offering and Backstop Agreement makes numerous findings regarding the benefits to the Debtors, their estates, their creditors, and other parties in interest, thus increasing the likelihood that at least some portion of the $6.8 million substantial contribution claim by the Petitioning Creditors will be allowed. *See* CRX-189 (Rights Offering and Backstop Approval Order) ¶¶ C, D, E & 11.

- Section 13(a) of the DIP Credit Agreement provides that the Debtors will not object to the DIP Lender's claims for substantial contribution. *See* CRX-186 (Notice of Filing of Revised DIP Documents). In the DIP Order, the Court found that the DIP financing provided by the Petitioning Creditors was, among other things, "necessary and vital . . . to a successful reorganization." CRX-187 (DIP Order) ¶ C.ii.

18. In addition, the Debtors' Plan does not adequately fund the litigation trust. *See* 11 U.S.C. § 1123(a)(5) (a plan shall "provide adequate means for the plan's implementation."). The Debtors have not satisfied their burden with any evidence, including expert opinions, that

[12] Under Section I.B.1 of the Debtors' Plan, the deadline for any party to file administrative claims, including substantial contribution claims under sections 503(b)(3)(D) and 503(b)(4) , is 30 days after the effective date.

$200,000 would be sufficient. 9/12/24 Hr'g Tr. (Nolletti) at 231:4-6. As Mr. Cordasco explained in unrebutted testimony, the Litigation Trust will require substantially more than the $200,000 currently set aside under the Debtors' Plan. *See* CRX-267 (Cordasco Report) at 21. In consultation with the proposed Litigation Trustee, Mr. Cordasco prepared a $3 million budget for the Litigation Trust using a "bottom's up" analysis of expected expenses. *Id*.; *see also* 9/12/24 Hr'g Tr. (Cordasco) at 327:16-329:19. Such budget is reasonable and in line with the budgets for similar litigation trusts in other recent cases, and the Debtors offered no contrary evidence. *See* CRX-267 (Cordasco Report) at 22.

19. At trial, the Debtors and their Shareholders attempted to fix some of their plan's feasibility issues by identifying $1.5 million of SME Revenue (which ignores the mandatory paydown provisions of the DIP Credit Agreement).[13] *See* 9/11/24 Hr'g Tr. (Hadjieleftheriadis) at 190:19-24; 9/12/24 Hr'g Tr. (Nolletti) at 244:20-24. If available, such amount does not address the significant shortfall identified by Mr. Cordasco and, in any event, is only conjecture. Mr. Nolletti, the Debtors' own expert on feasibility, had never heard of these amounts until trial and did not credit these amounts when assessing the feasibility of the Debtors' Plan. *See* DX-004 (Nolletti Report) ¶ 2.4; 9/12/24 Hr'g Tr. (Nolletti) at 244:8-245:3. They are also unrealistic given Mr. Kertsikoff's statements on the Debtors' DIP Motion filed in August which was necessitated by the Debtors' lack of liquidity. *See* CRX-185 (Kertikoff Decl.) ¶¶ 4, 8.

b. <u>The Debtors Have Not Shown that the Shareholders Have $37 Million in Cash</u>

20. Even if $37 million were sufficient to fund the Debtors' Plan, the Debtors have not satisfied their burden of demonstrating that the Shareholders have $37 million in cash.

[13] Section 2(f)(ii) of the DIP Credit Agreement (Mandatory Prepayments) requires that the Debtors paydown the DIP Claims in the event that cumulative liquidity of the SMEs exceeds $1,000,000. *See* CRX-186 (Notice of Filing of Revised DIP Documents).

21. All of the payments to be made on the effective date of the Debtors' Plan must be paid in cash. CRX-231 (Debtors' Am. Plan); *see also* 9/12/24 Hr'g Tr. (Nolletti) at 195:14-24. But the Shareholder New Value Contribution is not required to be made in all cash and may include some component of "cash equivalents."[14] *See* CRX-231 (Debtors' Am. Plan), Art.IV.A.1. There is no reason for the estate to bear the risk that cash equivalents fluctuate in value—even slightly—so that the estates do not receive the actual $37 million.

22. Additionally, the commitment letter signed by Shareholders Lassia Investment Company, Glafkos Trust Company, and Family Unity Trust Company (the "Commitment Letter") is only enforceable by the Debtors. *See* CRX-237 (Revised Shareholder Commitment Letter). But the Debtors are controlled by the same parties that control the Shareholders that are parties to the Commitment Letter. *See* 9/11/24 Hr'g Tr. (Kertsikoff) at 204:8-205:9. Therefore, if the Shareholders are unable or unwilling to fund the Debtors' Plan, their beneficial owners can simply cause the Debtors not to enforce the Commitment Letter, rendering it illusory.

23. As importantly, the Shareholders' supposed proof of funds both (a) demonstrates that they do not have $37 million in cash; and (b) fails to prove even that they have $37 million in "cash equivalents." Such proof of funds consists entirely of two letters and three account statements, which suffer from significant defects:

- [redacted]

[14] Mr. Nolletti defines cash equivalents as assets that are "almost instantaneously available to be converted to cash," explaining that under the GAAP definition "cash equivalents have to be convertible within ninety days." 9/12/24 Hr'g Tr. (Nolletti) at 255:10-256:1.

- [redacted]
- [redacted]

24. As Mr. Nolletti admitted at trial, the foregoing letters and account statements would not even confirm that the Shareholders have $37 million in "cash equivalents" as required by the Debtors' Plan. *See* 9/12/24 Hr'g Tr. (Nolletti) at 268:14-22. He also never verified that the signatories to the Commitment Letter were the actual holders of the accounts which he reviewed. *Id.* at 268:5-9. He also testified he would not be able to verify if securities or derivatives are cash equivalents without assessing each investment specifically. *Id.* at 255:23-257:4. The documentation does not provide such detail, so it cannot stand as evidence that the investments are even cash equivalents, let alone cash. Indeed, Mr. Nolletti admitted that it is possible that none of the amounts are cash. *Id.* at 270:15-18.

25. The Debtors and the Shareholders could have resolved these issues by liquidating any non-cash assets and funding them into escrow as requested by the Committee. *See* ECF 958. They did not. Meanwhile, the PC Plans are supported by escrowed cash and a commitment letter enforceable by the Debtors and by the Committee. *See* ECF 1109. The Court should weigh these facts heavily when assessing the feasibility of the Debtors' Plan against the PC Plans.

C. The Debtors' Plan Was Not Proposed in Good Faith

26. As set forth in the Objections, the Debtors' Plan was proposed and pursued in bad faith in violation of section 1129(a)(3). *See* PC Obj. ¶¶ 52-56; UCC Obj. ¶¶ 69-71. The record at trial made this clear:

- The same three individuals—Mr. Kertsikoff, Mr. Hadjieleftheriadis, and Ms. Karastamati—acted for the Debtors, as their officers and directors, and for the Shareholders, as their beneficial owners, to "negotiate" the Debtors' Plan. In the first

instance, those three individuals decided with their respective families to contribute the initial $10 million new value contribution. 9/11/24 Hr'g Tr. (Kertsikoff) at 204:8-12. After deciding with their "shareholder hats" on to make the contributions, the same three individuals took the proposal to the Debtors' board of directors, where as board members they decided to accept that proposal. *Id.* at 204:15-205:10. The same process was used to develop and approve the amended $30 million plan that the Debtors solicited to creditors. *Id.* at 211:9-212:8.

- The same three insiders directed counsel for the Debtors and for the Shareholders in the negotiation of the Debtors' Plan. Mr. Hadjieleftheriadis admitted that he, Mr. Kertsikoff, and Ms. Karastamati had the primary role in directing Reed Smith in connection with the negotiations of the Debtors' Plan. 9/11/24 Hr'g Tr. at 133:7-13. Similarly, he admitted that those same three individuals and their families directed the majority shareholders' counsel at Sidley Austin in connection with the plan negotiations. *Id.* at 134:9-14.

- The Debtors' initial plan was proposed without creditor input. As Mr. Kertsikoff testified at trial, the Debtors conducted no negotiations with creditors prior to proposing the plan. *Id.* at 208:1-5. The Debtors made no effort to reach out to noteholders. *Id.* at 208:6-8. The Debtors did not negotiate with the Committee. *Id.* at 209:7-10.

- The Debtors did not retain any financial advisors to assist in the development, formulation, or negotiation of their plan (despite the Petitioning Creditors, the Committee, and Shareholders doing so (*see* 9/11/24 Hr'g Tr. (Kertsikoff) at 208:18-20) and, instead, only sought the assistance of experts a month before the trial to defend their plan rather than formulate or market their plan or negotiate it with creditors.

- The Debtors took no steps to pursue alternative forms of financing and steadfastly refused to consider alternatives. The Debtors did not hire an investment banker, broker, or any financial advisors to search for potential financing sources. *Id.* 208:1-5; 208:14-19. The Debtors did not seek alternative buyers (*id.* at 209:3-6) and did not consider offering equity to any parties other than their Shareholders (*id.* at 207:18-25; 209:13-216:5); *see also* 9/11/24 Hr'g Tr. (Hadjieleftheriadis) at 140:9-20.

- After the Petitioning Creditors proposed their first plan, the Debtors' response was to meet to discuss an increase to their own plan. 9/11/24 Hr'g Tr. (Kertsikoff) at 211:21-25. When the Petitioning Creditors proposed their Alternative Plan, the Debtors did not negotiate with them or provide alternative terms. *Id.* at 210:13-15; *see also* 9/11/24 Hr'g Tr. (Hadjieleftheriadis) at 141:22-25; 151:9-152:10.[15]

[15] The testimony of Mr. Hadjieleftheriadis that the Debtors were not approached by any party "regarding alternative financing options or opportunities to purchase equity in the Reorganized Debtor" is not credible. DX-269 (Hadjieleftheriadis Decl.) ¶ 48. The Petitioning Creditors filed multiple plans leading to the proposed PC Plan and PC Alternative Plan. ECF 531, 532, 533, 574, 632, 658, 663, 664, 695, 696, 740, 741, 744, 745, 762, 763, 781, 796, 797, 798, 801, 802, 846, 847, 848, 849, 913, 914, 1070. The Debtors did not consider the PC Plan or PC Alternative Plan as alternative financing options or opportunities to purchase equity in the Reorganized Debtors. 9/11/24 Hr'g Tr. (Hadjieleftheriadis) at 144:12-17; 149:1-5; 154:15-19. Despite testifying to the purported lack of alternative financing options and the Debtors' purported negotiations with

- The Debtors have repeatedly attempted to use the Arbitration Award in violation of the Stay Relief Order to drum up "new value" when it was clear that the alternative creditor plans provided for more funding and better returns. *See supra* ¶¶ 13-15.

- As discussed above, the Debtors never made an effort to ensure their plan was adequately funded. Their expert accepted assumed emergence costs without question. 9/12/24 Hr'g Tr. (Nolletti) at 198:20-23. The Debtors never obtained an enforceable commitment letter. *See supra* ¶¶ 23-25. Their proof of funds did not demonstrate sufficient wherewithal in cash to finance their plan. *See supra* ¶ 24.

- After creditors voted, the Debtors tried to disenfranchise their creditors by discounting over $300 million in votes cast by noteholders. CRX-191 (Voting Decl.). They also advanced a theory that the votes of creditors should be disregarded in favor of "preferences," even though most of such "preferences" were indicated by creditors who accepted only one plan. 9/12/24 Hr'g Tr. (Furchtgott-Roth) at 97:9-13.

- As set forth below, the Debtors also granted favorable treatment under their plan to guaranty creditors, negotiated secret side deals with those creditors related to the Debtors' Plan, despite having no ongoing relationship with those creditors, and then withheld material documents related to those deals. *See infra* ¶¶ 28-31.

- Reed Smith, as counsel to the Debtors, which was responsible for negotiating the Debtors' Plan at the direction of the Debtors' officers and directors, is conflicted and has withheld information about who it represents, including the principals of the Debtors and other insiders and affiliated parties. ECF 957, 1013, 1017, 1019, 1064.

D. The Debtors' Favored Treatment of their "Historical Lenders" and Other Guarantee Creditors, Including Secret Deals and Millions in Side-Payments, Violates Numerous Provisions of the Bankruptcy Code.

27. Under the Debtors' Plan, guaranty creditors are separately classified from other unsecured creditors and are provided vastly different treatment. The most favored of such creditors—the Debtors' three "historical lenders"—would receive what the Debtors project to be 53.6% recoveries, consisting of a partial reinstatement of their guarantee claims and $1 million in cash. *See* CRX-51 (Debtors' Am. DS) at 7. As set forth in the Objections, the Debtors' separate classification and favored treatment of those creditors violates prohibitions on gerrymandering

their creditors, Mr. Hadjieleftheriadis was unable to answer basic questions about these negotiations, could not recall basic details, and stated that he was not the person at the Debtors responsible for these actions. *Id.* at 144:18-145:5; 146:7-11; 151:9-152:20.

accepting classes and on unfair discrimination against dissenting creditors—here, noteholders who stand to receive far lower recoveries. *See* UCC Obj. ¶¶ 61-66; PC Obj. ¶¶ 40-43, 57-61.

28. But discovery obtained during the confirmation process revealed that the Debtors' formal treatment of the guarantee claims was just the tip of the iceberg. As shown at trial, the Debtors engaged in a campaign to manufacture the support of one or more impaired classes by making secret side-deals with creditors in those classes.[16] Specifically, the evidence showed:

- On July 10, 2024, the Court entered its order approving solicitation of the Competing Plans. *See* ECF 856. Under that order, solicitation was to commence five business days later, and the Voting Deadline was set as August 9, 2024.

- On July 31, 2024, Mr. Kertsikoff (an officer and director of the Debtors) sent to "Piraeus Bank/Sunrise serviced by Intrum S.A." an offer to acquire the "Intrum Claims" against Eletson Corp and its affiliates. CRX-121. The offer provided that, "on the effective date of the Debtors [*sic.*] plan the reorganized Eletson Holdings Inc. and / or a legal entity to be nominated by Eletson Corp will acquire the Intrum claims . . . for a one-time consideration of $8.2 million," which amounts would be "netted off any recovery due to Pireaus Bank/Sunrise in accordance with the Debtors [*sic.*] plan following confirmation." *Id.* It is not clear whether this offer was accepted. The subject line of the email read "Eletson Holdings Ch.11_Sunrise." *Id.*

- On August 2, 2024, Mr. Kertsikoff sent to individuals at Cepal Hellas, servicer for the Alpha Bank loan held by Hermes Acquisitions, a "proposal for the final settlement of Eletson Corporation's debt . . . which is collateralized with Eletson Holdings' corporate guarantee and amounts to $4,302.198.44 (according to Chapter 11 data)." CRX-91 at 2. Under the proposal, "on the effective date of the Debtors' Plan, the reorganized Eletson Holdings Inc and/ or Eletson Corporation" would pay $750,000 in "full and final debt settlement" of Hermes' claims against Eletson Corp., which amount would "include[] the recovery that is projected to be paid according with the Debtor's Plan (class 2) following confirmation." *Id*. That day, the servicer responded, accepting the proposal "subject to a total payment of $750.000 on the effective date of the Debtor's Plan." *Id.* at 1.

- On August 8, 2024—*i.e.*, the day before the voting deadline—Mr. Hadjieleftheriadis (an officer and director of the Debtors) signed on behalf of Eletson Corporation and certain of its affiliates a settlement agreement with the holders of the Azure Guarantee Claims (collectively, "Azure"). CRX-238. The settlement resolved, among other things, a series of arbitrations with Azure that had begun in 2021. *Id.*; *see also* 9/11/24 Hr'g Tr. (Hadjieleftheriadis) at 165:7-14. Under the settlement agreement, Azure agreed to

[16] Some of this discovery was obtained from third parties, which the Debtors tried to prevent. CRX-37 (8/21/24 Hr'g Tr.) at 80:20-24.

"provide to Eletson evidence in writing that [Azure] has voted to accept the Debtors' Plan and reject the PC Plan and the Alternative PC Plan and has already sent the relevant ballot by email to the address stated in the relevant solicitation materials." CRX-238 ¶ 1.

- In addition to those offers and agreements made during the voting period, the Debtors previously reached an agreement with another corporate guarantee creditor, Aegean Baltic Bank ("AB Bank"). Under the June 5, 2024 agreement (CRX-123), signed by Ms. Karastamati (an officer and director of the Debtors), Eletson Corp. agreed to pay AB Bank $5 million in a series of payments over six years. Eletson Corp. made the first payment under that agreement—totaling $1 million—to AB Bank on June 13.[17] CRX-90 (June 13, 2024 Bank Statement).

29. Each of these creditors—the three holders of Corp Guaranty Claims and the holders of the Azure Guaranty Claims—voted to accept the Debtors' Plan even though the creditors in those classes would receive equal or greater recoveries under the PC Alternative Plan. *See* CRX-50 (PC Alt. DS) § IV.

30. The Debtors' conduct with respect to these guarantee claims violates numerous provisions of the Bankruptcy Code. The Debtors' unlawful gerrymandering of impaired classes, described above and in the Objections, is made worse by the fact that the Debtors then sought to secure acceptances of those gerrymandered classes by offering them undisclosed inducements during the voting period—either expressly tied to plan voting, as in the case of Azure, or more generally tied to the Debtors' plan going effective. This effort to secure accepting classes by offering undisclosed inducements also violates section 1129(a)(3), which requires that the plan

[17] AB Bank resigned from the Committee on June 14, 2024—the day after it received the $1 million payment from Eletson Corp. Thereafter, the Debtors made numerous insinuations in open Court, in public filings, and elsewhere—including in response to questions from the Court—about reasons why AB Bank may have resigned, without ever disclosing the $1 million payment to the parties or to the Court. *See, e.g.*, CRX-29 (6/18/24 Hr'g Tr.) at 34:2-35:6 (questioning whether AB Bank reviewed FTI declaration on plan feasibility prior to its resignation); ECF 862 at 1 (asserting that AB Bank "resigned when the Murchinson-controlled 'committee' appealed Your Honor's discretionary denial of the motion to appoint a trustee"); CRX-32 (7/18/24 Hr'g Tr.) at 67:11-19 ("THE COURT: Why did it [AB Bank] leave the committee? . . . MR. SOLOMON: Your Honor, I don't know, but I do know that they -- I do know that the timing was proximate to when Your Honor ruled on the trustee motion. And then the committee decided to take an appeal from that. I don't have direct Information about that, Your Honor. I do know that that [*sic*] they're not there any longer."). The parties learned of the $1 million payment later in discovery.

be "proposed in good faith and not by any means forbidden by law." In addition, the Debtors' undisclosed effective date obligation to Cepal/Hermes of $750,000 violates section 1129(a)(4) of the Bankruptcy Code, which requires that "[a]ny payment made or to be made by the proponent [or] by the debtor . . . in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable." 11 U.S.C. § 1129(a)(4). On cross-examination, Mr. Kertsikoff admitted that the Debtors' disclosure statement does not reflect this payment or any of the agreements entered into with the guaranty creditors promising lucrative consideration. *See* 9/11/24 Hr'g Tr. (Kertsikoff) at 226:14-17.

III. UNDER SECTION 1129(c) OF THE BANKRUPTCY CODE, THE COURT MUST RESPECT THE WILL OF CREDITORS AND CONFIRM THE PC PLAN

31. Under section 1129(c) of the Bankruptcy Code, if the Court finds that multiple plans are confirmable, "the court shall consider the preferences of creditors and equity security holders in determining which plan to confirm." 11 U.S.C. § 1129(c); *see also* PC Obj. ¶¶ 72-76; UCC Obj. ¶¶ 62-63. Because the PC Plan is confirmable as a matter of law and the Debtors' Plan is not, the Court is required to confirm the PC Plan irrespective of creditor voting or preferences. Even if the Debtors' Plan were confirmable, however, the Court must confirm the PC Plan under section 1129(c) because of the overwhelming creditor vote. As courts have recognized, the clearest expression of which plan creditors prefer is the voting results. *See In re TCI 2 Holdings, LLC,* 428 B.R. 117, 184 (Bankr. D.N.J. 2010) ("The preference of creditors is reflected in the voting results."); *In re Holley Garden Apartments, Ltd*., 238 B.R. 488, 496 (Bankr. M.D. Fla. 1999) ("the votes of unrelated creditors are an important consideration" in determining their preference).

32. The evidence, as set forth in the declaration of James Lee of Kurtzman Carson Consultants, LLC dba Verita Global ("Verita"), the solicitation agent, and in Verita's detailed

voting spreadsheet, shows that creditors overwhelmingly voted in favor of the PC Plan and against the Debtors' Plan. *See* CRX-131 (Plan Election Spreadsheet); CRX-262 (Voting Decl.) at Ex. A.[18]

- 65 claims voted to accept the PC Plan, while just 29 claims voted to accept the PC Alternative Plan, and 22 claims voted to accept the Debtors' Plan. *See* CRX-131 (Plan Election Spreadsheet). More claims (77) voted on the PC Plan than the Debtors' Plan (62) and the PC Alternative Plan (52). *Id.*

- The 65 claims that voted to accept the PC Plan represented 84.4% in number and 71.2% in amount of all claims voting on the PC Plan. In contrast, the 29 claims that voted to accept the PC Alternative Plan were 55.8% in number and 52% in amount of all claims voting on the PC Alternative Plan. The 29 claims that voted to accept the Debtors' Plan represented just 35.5% in number and 32.5% in amount of all claims voting on the Debtors' Plan. *Id.*

- Creditors overwhelmingly rejected the Debtors' Plan. Over 64% of claims in number and over 67% of claims in amount voted to reject the Debtors' Plan, while just 15.6% of claims in number and 28.8% of claims in amount voted to reject the PC Plan. *Id.*

- By claim amount, over 89% of Trade Creditor Claims, 96% of the Noteholder Election Recovery Claims, and over 98% of Petitioning Creditor Exchange Note Claims and Non-Petitioning Creditor Exchange Note Claims voted to reject the Debtors' Plan. *Id.*

- While inappropriate, removing Pach Shemen's claims from the vote count does not materially change the number of creditors who voted to accept the PC Plan. 63 non-Pach Shemen claims voted to accept the PC Plan (84% of voting creditors). *Id.* [19]

33. The Debtors failed to refute this evidence at trial. In the first place, Dr. Furchtgott-Roth admitted that he had no expertise in bankruptcy and was unfamiliar with the Bankruptcy Code's provisions for how creditor votes are counted, including section 1126(a) that provides that a holder of a claim votes by voting either "to accept or reject a plan." *See* 9/12/24

[18] A demonstrative version of Verita's spreadsheet is attached hereto as **Exhibit B**.

[19] The Debtors have never moved to disregard Pach Shemen's voting by way of vote designation or otherwise; even under their equitable subordination theory, Pach Shemen would still be entitled to vote. However, even if the Court were to adopt the Debtors' view of which creditor votes count—rendering the PC Plan not fully consensual (and counting the Azure Guaranty Claims at $94 million rather than $1.00 as required for contingent claims and certainly something less than full given the settlement)— the result would not change. The PC Plan is the only plan that can satisfy the "cramdown" requirements under section 1129(b). *See supra* ¶¶ 1-5.

Hr'g Tr. (Furchtgott-Roth) at 20:2-21:16; 105:11-17. In addition, Dr. Furchtgott-Roth admitted that exhibits 5 and 6 of his rebuttal report, from which he draws conclusions about which plan creditors prefer, tabulates claims with no preference election (because they only voted to accept one plan) as "No Votes[.]" *Id.* at 101:22-103:5. This method ignores that creditors were instructed on their ballots to only mark a preference "if [they] have voted to accept more than one Competing Plan." CRX-188 (Exhibits to Solicitation Order) at 88. If calculated in accordance with the ballot instructions, the vote tabulation shows that:

- Of the 26 claimants that voted to accept more than one plan and indicated a preference, only two (2) holders marked a preference for the Debtors' Plan. *See* CRX-131 (Plan Election Spreadsheet).

- By contrast, of those same 26 claimants, 14 (53%) marked a preference for the PC Plan and 10 holders marked a preference for the PC Alternative Plan (over 38%). *Id.*

34. The clear creditor preference for the PC Plan becomes even more stark if the Court sets aside the votes cast by the family members of the Debtors' insiders (the "Insider Claims") and the guaranty holders that received generous settlement offers in the months before the voting deadline on the plans (the "Settlement Creditors"). *See supra* ¶¶ 28-31.

- Of the 12 claims that voted to reject the PC Plan, only 2 of those claims were neither Insider Claims or Settlement Claims. If the Court ignores the votes of Insider Claims and Settlement Claims, then 97% of all voting claims voted to accept the PC Plan by number and 3% of all voting claims voted to reject the PC Plan by number. CRX-131 (Plan Election Spreadsheet)

- Of the 22 claims that voted to accept the Debtors' Plan, only 12 of those claims were not Insider Claims or Settlement Claims. If the Court ignores the votes of Insider Claims and Settlement Claims, then just 23% of claims by number voted to accept the Debtors' Plan while just under 77% of claims by number voted to reject the Debtors' Plan. *Id.*

35. For these reasons, if the Court determines that more than one plan can be confirmed, the Court should respect the choice of creditors and confirm the PC Plan. *See, e.g., Nw. Bank Worthington v. Ahlers*, 485 U.S. 197, 206-07 (1988) (explaining that "the Code provides that it is up to the creditors – and not the courts – to accept or reject a reorganization

plan which fails to provide them adequate protection or fails to honor the absolute priority rule" and that, even if the court "believed that petitioners or other unsecured creditors would be better off if respondents' reorganization plan was confirmed . . . that determination is for the creditors to make in the manner specified by the Code").

IV. THE DEBTORS' ASSERTIONS OF "BAD FAITH," ARE UNTETHERED TO THE PC PLANS AND WITHOUT MERIT

36. The Debtors' argument that the PC Plan lacks "good faith" within the meaning of section 1129(a)(3) misconstrues the law and is inconsistent with the facts.

37. The Debtors focus on the purported prepetition conduct of Murchinson and Levona to argue that the PC Plan was proposed in bad faith. But "good faith" under section 1129(a)(3) concerns "the process of plan development than the contents of the plan." *In re Chemtura Corp.*, 439 B.R. 561, 608 (Bankr. S.D.N.Y. 2010). Specifically, it is concerned with whether the plan "was proposed with honesty and good intentions and with a basis for expecting that a reorganization can be effected." *Argo Fund Ltd. v. Bd. of Directors of Telecom Argentina, S.A. (In re Bd. of Directors of Telecom Argentina, S.A.*, 528 F.3d 162, 173-74 (2d Cir. 2008) (quotation omitted); *see also Matter of Madison Hotel Assocs*., 749 F.2d 410, 424-425 (7th Cir. 1984) (citation omitted) (inquiry concerns only whether "there exists 'a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'"). Thus, the Debtors' focus on prepetition conduct that is unrelated to the plan and that largely concerns parties who are not plan proponents is simply untethered from the "good faith" requirement under section 1129(a)(3). Courts applying that provision do not consider whether other non-plan-specific conduct, such as filing a bankruptcy petition, was the product of good faith. *See In re Garsal Realty, Inc.*, 98 B.R. 140, 150 (Bankr. N.D.N.Y. 1989) ("[T]here is a legal distinction between good faith in filing a petition and good faith in proposing a plan under

Code § 1129(a)(3)[.]") (citing *Madison Hotel*); *In re Swartville, LLC*, No. 11-08676-8-SWH, 2012 WL 3564171, at *5 (Bankr. E.D.N.C. Aug. 17, 2012) ("As compared to the good faith filing inquiry under § 1122, the court's consideration of a debtor's good faith under § 1129(a)(3) is more narrowly focused, and tests directly whether the debtor's conduct in formulating, proposing and confirming a plan displays the requisite honesty of intention.").

38. The Debtors have proffered no evidence, as is their burden, that the Petitioning Creditors were dishonest or had improper intentions when developing and proposing the PC Plan. As detailed in the PC Plan itself and/or the Spears Declaration—which the Debtors did not rebut at trial through cross-examination:

a. After the Debtors proposed their woefully inadequate $10 million initial Shareholder New Value Contribution-based plan that clearly undervalued the Debtors and intended to give the Shareholders all of the Debtors' value, the Petitioning Creditors acted quickly to maximize returns for all creditors by filing their own plan (*see* CRX-264 (Spears Decl.) ¶¶ 5-6; CRX-212 (Notice of Filing of Overbid Chapter 11 Plan));

b. The PC Plan provides for greater returns to creditors than the Debtors' Plan through significantly greater capital investment by way of a $53.5 million equity rights offering (initially $27 million, then increased to $43.5 million, and then increased again) made available to all impaired general unsecured creditors (*see* CRX-264 (Spears Decl.) ¶¶ 8, 13; *compare* CRX-220 (Initial PC Plan) §§ 1.134, 3.3(c)(iii)(2) ($27 million), *and* CRX-223 (First Am. PC Plan) §§ 1.124, 3.3(c)(iii)(2) ($43.5 million), *with* CRX-245 (Further Am. PC Plan) §§ 1.126, 3.3(c)(iii)(2) ($53.5 million));

c. Unlike the Debtors' Plan, not only was the opportunity to receive equity in the Reorganized Debtors made available to creditors instead of out-of-the-money Shareholders, but the opportunity to receive equity and invest in the Reorganized Debtors was made available to all impaired general unsecured creditors on the same exact terms as the Initial Backstop Party (*compare* Debtors' Plan at Art. II.C.8 (equity distributed to holders of Class 7 (Interests), *with* CRX-245 (Further Am. PC Plan) §§ 3.3(c)(iii)(1)(A) (equity option available to Class 3 (General Unsecured Claims), and 3.3(c)(iii)(2) (rights offering available to Class 3 (General Unsecured Claims)); *see also* CRX-189 (Rights Offering and Backstop Approval Order) ¶ A);

d. Unlike the Debtors' Plan, the PC Plan is the product of extensive good faith and arms'-length negotiations with the Debtors' major creditors and interested parties, including the Committee, the 2022 Notes Trustee, the Old Notes Trustee, and the U.S. Trustee, and has all of these parties' approval (*see* CRX-264 (Spears Decl.) ¶ 12; CRX-85 (April 23, 2024 Email); CRX-87 (May 13, 2024 UCC Comments on PC Plan));

e. Unlike the Debtors' Plan, the PC Plan was revised to incorporate feedback from various case parties, including revisions to improve creditors' recoveries by way of improved cash out amounts, a decreased Backstop Premium, and minority equity holder protections as it relates to transactions involving Pach Shemen's affiliates (*see* CRX-264 (Spears Decl.) ¶ 12);

f. At their own cost and expense, the Petitioning Creditors retained multiple third-party advisors—including a financial advisor and solicitation agent, neither of which the Debtors had obtained in connection with formulating and negotiating their insider plans—and ensured pre-solicitation that the PC Plan was supported by their advisors' valuation analysis, financial projections, and liquidation analysis, all of which were made available to parties in interest in the Petitioning Creditors' disclosure statements (*see* CRX-47 (Further Am. PC Plan); CRX-50 (DS for Further Am. PC Plan) for the benefit of creditors (*see* CRX-264 (Spears Decl.) ¶ 10; CRX-48 (Am. DS for Am. PC Plan), Art. V, VI; 9/12/24 Hr'g Tr. (Hadjieleftheriadis) at 191:1-14);

g. Each time parties-in-interest raised concerns about the PC Plan, the Petitioning Creditors and their advisors addressed them, including by:

(1) setting aside and then later escrowing the $43.5 million amount of the rights offering (*see* CRX-264 (Spears Decl.) ¶ 12; CRX-192 (Notice of Filing of Financial Wherewithal); ECF 1109 (PC Commitment Letter);

(2) increasing the rights offering funding amount from $27 million to $43.5 million to $53.5 million at the request of the Committee to ensure that the PC Plan is feasible (*see* CRX-264 (Spears Decl.) ¶ 13; CRX-220 (Initial PC Plan) §§ 1.134, 3.3(c)(iii)(2) ($27 million), *and* CRX-223 (First Am. PC Plan) §§ 1.124, 3.3(c)(iii)(2) ($43.5 million); CRX-245 (Further Am. PC Plan) §§ 1.126, 3.3(c)(iii)(2) ($53.5 million));

(3) increasing the cash-out amounts made available to creditors by providing that any cash on account of Levona's disputed proof of claim will not be escrowed given the Debtors' pending objection, which increases the amount of cash payable to other creditors on the effective date (*see* CRX-245 (Further Am. PC Plan) § 7.6; and

(4) providing up to an additional $3 million to the GUC Cash Pool depending on the final amount of allowed Professional Fee Claims and DIP Claims (*see* CRX-245 (Further Am. PC Plan) §§ 1.79, 3.3(c)(iii)(B).

39. Furthermore, the Court has already recognized the Petitioning Creditors' efforts to maximize estate value in these cases in the Rights Offering Order, in which the Court found that "[t]he Rights Offering, the Rights Offering Procedures, the Rights Offering Materials, and the Backstop Agreement serve to maximize the value of the Debtors' estates and are in the best interests of the Debtors, their estates, their creditors, and other parties in interest." CRX-189

¶ G. The Court also found the Petitioning Creditors' good faith in the DIP Order, recognizing that the Petitioning Creditors provided $10 million in new-money DIP financing on the most favorable terms available when the Debtors were in need of liquidity to preserve and maintain their going concern reorganization value. CRX-187 (DIP Order) ¶ C.

40. Despite a mountain of case law to the contrary, the Debtors nonetheless argue that "pre-filing conduct" is relevant under Section 1129(a)(3). 9/11/24 Hr'g Tr. (Statement of L. Solomon) at 51:16-52:5; 9/13/24 Hr'g Tr. (Statement of L. Solomon) at 5-8. But the cases discussing "pre-filing conduct" discuss conduct preceding the filing of a bankruptcy plan, not conduct preceding the filing of a bankruptcy petition, which is "largely irrelevant" to a Section 1129(a)(3) analysis. *In re Dow Corning Corp.*, 244 B.R. 673, 675 (Bankr. E.D. Mich. 1999), *aff'd*, 255 B.R. 445 (E.D. Mich. 2000), *aff'd and remanded on different grounds*, 280 F.3d 648 (6th Cir. 2002) ("By the time a case reaches the plan confirmation stage, pre-petition behavior is largely irrelevant. Instead, when considering whether a plan satisfies the § 1129(a)(3) requirement, the focus of the court must be on the plan itself. This issue is whether the plan 'will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'") (quoting *Madison Hotel*).

41. Either way, the Debtors' bad-faith theories are all without merit. They have been advancing their "Murchinson-is-controlling-everyone-and-trying-to-destroy-Eletson" theory since the involuntary petitions were commenced. Even if this argument were relevant to section 1129(a)(3), Murchinson is a nonparty to these proceedings, and the Debtors have never taken the steps necessary as a matter of law to have a court impute Murchinson's or any other

party's actions to Pach Shemen.[20] The Debtors instead rely on the Arbitration Award for these arguments, ignoring that Judge Liman vacated the award as to Murchinson and Pach Shemen (including any alter ego findings). *See* CRX-16 (Feb. 9, 2024 Opinion and Order) at 78-81. The Debtors never sought to prove at this trial that Murchinson (or Levona) was any other party's alter ego for legal purposes. Instead, the Debtors improperly snuck this theory into their opening and closing statements at trial, without actually briefing them in advance so that creditors could meaningfully challenge them. *See United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020) ("[A]s a general rule, our system is designed around the premise that parties represented by competent counsel know what is best for them, and are responsible for advancing the facts and argument entitling them to relief.") (citation omitted). As Judge Liman noted, "[a]n 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 . . . . Common ownership and control is not enough." CRX-16 (Feb. 9, 2024 Opinion and Order) at 79 n.21 (citations omitted). The Debtors have not sufficiently argued this, much less proven it.

42. Dr. Furchtgott-Roth testified on behalf of the Debtors that Murchinson has controlled Pach Shemen from an economic perspective in connection with these cases (9/12/24 Hr'g Tr. (Furchtgott-Roth) at 38:19-22), which has nothing to do with good faith under the Bankruptcy Code, or alter ego liability. He admitted this (*id.* at 28:14-31:3), and also admitted that he was not qualified to offer any such testimony (*id.* at 19:19-24:3). The testimony of Adam Spears, a representative of Pach Shemen (who has his own company and no affiliation with

[20] Efforts to do so for the first time in post-trial briefing without bringing a proper adversary proceeding should be disregarded. *See infra* ¶¶ 49-50 (discussing litigation by ambush).

Murchinson), who appeared in person at the hearings but the Debtors declined to cross-examine both in connection with the claims objections and confirmation, and who stated that "I'm running Pach Shemen," also contradicts the Debtors' position. Spears Dep. (Sept. 3, 2024) Tr. 130:23-131:7.

43. Additionally, Dr. Furchtgott-Roth's opinion that Wilmington and the Committee were controlled by Murchinson was belied by his own trial testimony that: (1) Wilmington had discretion to make independent decisions based upon documents that he never reviewed (9/12/24 Hr'g Tr. (Furchtgott-Roth) at 49:14-16, 124:16-125:23, 129:9-20, 130:3-134:8); and (2) he did not know who is in charge of the Committee (*id.* at 51:12-23). Dr. Furchtgott Roth was not even aware at trial that the Committee—like the Petitioning Creditors—had taken directly adverse economic positions vis-à-vis Murchinson and Levona. *Id.* at 39:25-42:14.

44. In any event, the Debtors did not convincingly assert that any of Murchinson's purported bad-faith conduct—all of which happened prepetition before the formation of Pach Shemen—actually pertained to the Petitioning Creditors' proposal of the PC Plan. For example, the Debtors argue (and their purported expert Dr. Furchtgott-Roth opines) that Pach Shemen's acquisition of the Notes "was made in bad faith with respect to Gas and Holdings" because an October 31, 2022 email between Sean Mulroy and Sean Sauler of Redwood Capital purported to "recount[] what [Adam] Spears had told" Mr. Mulroy, including that Mr. Spears was "working with Murchinson" and that "they want strategic influence on how holdings is directed." DX-047 (Furchtgott-Roth Report) ¶¶ 48-49. Notwithstanding the fact that this document (DX-002(U)) is multiple hearsay and does not describe any actual conduct by any party, the email was also sent before Pach Shemen was created, and years before the PC Plan was formulated.

45. Similarly, the Debtors argue (and Dr. Furchtgott-Roth opines) that Pach Shemen's acquisition of the Notes was in bad faith because Pach Shemen did "not disclos[e] that it was aware that its purchases were inconsistent with" the Second RSA and OCM Stipulation, pointing to a December 2022 email exchange between Mr. Spears and David Corleto of Caspian (one of the Selling Noteholders) that mentioned a "bankruptcy strategy" but did not mention the Second RSA and OCM Stipulation. DX-047 (Furchtgott-Roth Report) ¶¶ 54, 59 (citing PS00003130). Again, this email has nothing to do with the formulation of the PC Plan, and it was sent before Pach Shemen was created. Also, Mr. Spears testified that Pach Shemen did not know about the Second RSA or the OCM Stipulation until after obtaining the Notes. Spears Dep. (July 28, 2023) Tr. 175:21-176:6, 179:7-18, 179:23-180:6, 180:13-20, 216:1-217:1. Mr. Spears further testified that he conveyed his consideration of a "bankruptcy strategy" to Caspian as a negotiating tactic. *Id*. at 139:22-24, 140:1-140:5, 141:10-141:15, 141:18-142:5,142:7-143:9. In fact, Mr. Spears testified that Pach Shemen invested in the Notes because he thought they were a good investment. *Id.* at 66:12-19, 71:5-11, 71;16-20, 74:23-76:1, 77:20-78:4, 78:10-24; *see also* CX-59 (Spears Decl.) ¶¶ 8-9; CX-132 (Oct. 21, 2021 Spears email analyzing investment in Notes). Mr. Spears also testified that filing an involuntary was one of many options Pach Shemen considered, which it did only after the Debtors refused to accept service in the Indenture Trustee's bondholder litigation. Spears Dep. (July 28, 2023) Tr. 141:25-142:5, 142:7-143:9; *see also* CX-59 (Spears Decl.) ¶¶ 18-21. There was no bad faith.

46. Finally, the Debtors' argument that the Petitioning Creditors intend to liquidate the Debtors (9/11/24 Hr'g Tr. (Statement of L. Solomon) at 36:11-20; 9/13/24 Hr'g Tr. (Statement of L. Solomon) at 99:15-100:1) is devoid of any evidentiary support. The PC Plan provides for a reorganization of the Debtors and—unlike the Debtors' Plan—the PC Plan is

adequately funded to effect such a reorganization. Indeed, the valuation analysis and projections prepared by Batuta are all based upon the Reorganized Debtors operating for years after the Effective Date, rather than being liquidated. *See generally* CRX-265 (Batuta Report).

47. In sum, because the PC Plan "has been approved by the requisite majority of unsecured creditors, has been proposed in a good faith effort to rehabilitate the debtors' operations while repaying the unsecured claim holders more than they will receive upon liquidation," and the PC Plan's "financial assumptions are reasonable and [] projections appear to be attainable," the PC Plan was proposed in good faith and satisfies section 1129(a)(3). *In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984).

V. ADDITIONAL ISSUES

A. The Debtors' New Arguments and Opinions Should Be Excluded.

48. The Debtors raised a number of new arguments and expert opinions at the trial, and forecast that they intend to advance new legal theories in their post-trial submission. For example, the Debtors: (1) argued for the first time at trial that the Court's decision on plan confirmation is bound by the Arbitration Award under collateral estoppel (9/9/24 Hr'g Tr. (Statement of L. Solomon) at 38:5-39:39, 9/13/24 Debtors' Closing Demonstratives at 117); and (2) proffered expert testimony the night before trial began that SME Revenue could provide an additional $1 million for creditors under the Debtors' Plan (HFR Supplemental Report Ex. 3; *see* 9/11/24 Hr'g Tr. (Statement of L. Solomon) at 15:18-23). In addition, both Mr. Veraros (regarding the Debtors' failure to account for certain excess payments in their discounted cashflow model) and Dr. Furchtgott-Roth (regarding how to count votes) proffered new opinions at trial that were not contained in their respective reports. *See* 9/13/24 Hr'g Tr. (Veraros Testimony) at 9:21-13:1, 13:6-19, 47:16-19; 9/12/24 Hr'g Tr. (Furchtgott-Roth Testimony) at 101:1-104:20, 176:21-177:17. And the Debtors told the Court in their closing argument on plan

confirmation that "we will show Your Honor in our brief what the cases [discussing *Coltex*] actually mean and what they say," despite the fact that they failed to make any *Coltex*-related arguments in their papers. 9/13/24 Hr'g Tr. (Statement of L. Solomon) at 103:22-104:12.

49. Courts routinely reject new arguments and opinions that are not raised at a party's first opportunity in a matter. Whether raised in reply briefs, at oral argument, or at trial, new arguments and opinions are consistently deemed waived, because otherwise the opponent would not be provided with a meaningful and fair opportunity to explore the new theory and explain its position as to why the theory lacks merit. As Judge Lane explained:

> [T]he Plaintiffs waited until the hearing on the Defendants' motions to dismiss and then raised the issue for the first time. That alone is a basis to reject the argument. To countenance such action would promote litigation by ambush and, in any case, deprive defendants of a fair opportunity to respond. In the absence of such a rule, parties would have an incentive to withhold certain claims or defenses until the last moment, lying in wait to spring onto their opponents unanticipated arguments in reply briefs or in the final moments of oral argument. Such an outcome would not only be inefficient, but also manifestly unjust.

In re AMR Corp., 598 B.R. 365, 384 (Bankr. S.D.N.Y. 2019) (collecting cases). Accordingly, this Court should ignore all of the Debtors' improper new arguments and opinions, whether advanced for the first time at trial or in their post-trial brief (to which, if made, the Committee and the Petitioning Creditors will request an opportunity to respond).

B. The Debtors' Improper Expert Opinions and Lay Witness Declarations Should Be Excluded or Afforded No Weight

50. As discussed in depth in the Petitioning Creditors' Motion in Limine (ECF 1105), the Debtors proffered expert opinions and lay witness declarations that are improper and should be excluded. For example, Dr. Furchtgott-Roth offered legal opinions disguised as economic opinions, and interpreted legal and nonlegal documents and reached conclusions about what they mean. Yet he admitted on cross-examination that: (1) he is not an expert in the law (including

the Bankruptcy Code); and (2) he is not an expert in determining what evidence means, which are decisions, like the legal questions at issue, that are "for the judge to make." 9/12/24 Hr'g Tr. (Furchtgott-Roth) at 20:2-4; 20:22-25; 21:1-13; 22:18-20; 23:23-24:13, 28:3-24; 60:2-61:11; 91:21-92:14, 105:11-17. Tellingly, Dr. Furchtgott-Roth also testified that his opinions are wholly "independent of" and "not tied to" the determination of the legal issues in the case for the Court's determination. *Id.* 28:3-31:3, 60:2-61:11. An expert opinion more untethered to the "facts in issue" is difficult to imagine. *See* FRE 702(a). Similarly, Mr. Noletti admitted that he does not know the standards governing feasibility, and when questioned by the Court, Mr. Noletti acknowledged that he was unaware of the how much cash, if any, the Debtors had available to fund the Debtors' Plan. 9/12/24 Hr'g Tr. (Nolletti) 193:11-194:1, 270:10-18. Mr. Noletti's testimony should also be stricken as unreliable. FRE 702(b)-(c). And Mr. Veraros's expert opinion is that the Debtors' sole reliance on internal cash flow projections and the discounted cash flow ("DCF") valuation methodology was reasonable even though he characterized the shipping industry as "highly cyclical," "unpredictable [in] nature," and subject to "pronounced volatility" (CRX-248 (Veraros Report) at 7-8), and courts in this District have held that DCF analyses are unreliable in volatile industries like shipping (*see In re Genco Shipping & Trading, Ltd.*, 513 B.R. 233, 254-60 (Bankr. S.D.N.Y. 2014)). Mr. Veraros's opinions should therefore also be excluded. *See* FRE 702(b)-(c).

51. Regarding the lay witness declarations, lay witness testimony that purports to render legal conclusions, find facts, and/or interpret evidence is improper and should be excluded. *See* ECF 1105 (Motion in Limine) ¶ 30 (collecting cases). The declarations of Mr. Kertsikoff and Mr. Hadjieleftheriadis are replete with legal conclusions and self-serving interpretations of documentary evidence. They should also be excluded or accorded no weight

C. The Debtors' Proposed Confirmation Order

52. If the Court determines to confirm the Debtors' Plan and not the PC Plan or the PC Alternative Plan, the Petitioning Creditors and the Committee respectfully request an opportunity to be heard with respect to the Debtors' proposed confirmation order [ECF 1063] prior to its entry. At a minimum, paragraph 42 of the proposed order should be revised to remove the waiver of the 14-day stay required by Bankruptcy Rules 3020(e) and 6004(h) . Furthermore, in the event that the Court confirms the Debtors' Plan, the Court should require that the Debtors enter into a form of the Litigation Trust Agreement drafted by and acceptable to the Committee. *See* ECF 1111 (Debtors' Plan), Art.I.96 ("Litigation Trust Agreement" means "the trust agreement . . . that . . . shall be drafted and filed by the Committee.").

D. The Debtors' Claim Objections

53. The Debtors have advanced no legally cognizable theory that would allow disallowance of claims based upon the Notes. As discussed in prior filings, the Debtors cannot (and do not) dispute that—regardless of who owns the Notes—the Debtors owe the amounts due thereunder to *someone*, and the Court has to deem the Notes payable, and the claim allowable, to *someone*. *See In re Roby*, No. 06-10668, Docket No. 93, at *2 (Bankr. N.D. Cal. Mar. 17, 2008) ("An objection based on Section 502(b)(1) "refers to the *claim*, not the *claimant*." (emphasis in original)). Regarding the Debtors' arguments that Pach Shemen and Alpine are not valid creditors, the Petitioning Creditors rest on their papers (ECF 377, 643, 1053), and the record.[21]

[21] For the avoidance of doubt, the Committee takes no position on the pending claim objections.

CONCLUSION

For the foregoing reasons and those presented at trial by the Petitioning Creditors and the Committee, the Claims should all be allowed and the PC Plan should be confirmed.

DATED: September 20, 2024
New York, New York

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EXHIBIT A

Case Management Plan and Scheduling Order

Eletson Holdings, Inc. v. Levona Holdings, Ltd.,
No. 23-cv-07331 (LJL) (S.D.N.Y. Sept. 18, 2024)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Eletson Holdings, Inc. and Eletson Corp.
Petitioners/Cross-Respondents,

v-

Levona Holdings, Ltd.
Respondent/Cross-Petitioner

23-cv-07331 (LJL)

~~LEVONA HOLDINGS, LTD.'S PROPOSED~~
CASE MANAGEMENT PLAN AND SCHEDULING ORDER

LEWIS J. LIMAN, United States District Judge:

This Civil Case Management Plan and Scheduling Order is submitted by the parties in accordance with Federal Rule of Civil Procedure 26(f)(3):

1. All parties [consent _____ / do not consent __X__] to conducting all further proceedings before a United States Magistrate Judge, including motions and trial. 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences. [*If all parties consent, the remaining paragraphs need not be completed.*]

2. The parties [have ____ / have not __X__] conferred pursuant to Federal Rule of Civil Procedure 26(f).

3. The parties [have _X__ / have not _____] engaged in settlement discussions.

4. Any motion to amend or to join additional parties shall be filed no later than N/A _____. [*Absent exceptional circumstances, a date not more than thirty (30) days following the initial pretrial conference.*] Note: Pursuant to Paragraph 3(C) of the Court's Individual Practices in Civil Cases, the Court will deny a motion to dismiss as moot, without prior notice to the parties, if a plaintiff amends its pleading without objection from the defendant. The moving party may then (a) file an answer or (b) file a new motion to dismiss. In the event the moving party wishes to rely on its initially filed memorandum of law, the party may so indicate in its motion to dismiss the amended pleading and need not file the memorandum of law again.

Pursuant to Paragraph 2(K) of the Court's Individual Practices in Civil Cases, parties may extend the deadlines set forth in Local Civil Rule 6.1 by an agreed-upon schedule, which shall govern as long as it is disclosed to the Court in a letter accompanying the initial motion. The parties should discuss any anticipated motion in advance of the Initial Pretrial Conference and should come prepared to discuss a proposed briefing schedule for any anticipated motion.

5. Initial disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure shall be completed no later than _____September 25, 2024_____. [*Absent exceptional circumstances, a date not more than fourteen (14) days following the initial pretrial conference*.]

6. All fact discovery is to be completed no later than _Jan. 13, 2025_____. [*A date not more than one hundred twenty (120) days following the initial pretrial conference, unless the Court finds that the case presents unique complexities or other exceptional circumstances*.]

7. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. The following interim deadlines may be extended by the parties on consent without application to the Court, provided that the parties meet the deadline for completing fact discovery set forth in Paragraph 6 above.

   a. Initial requests for production of documents shall be served by _September 25, 2024_____.

   b. Interrogatories pursuant to Rule 33.3(a) of the Local Rules of the Southern District of New York shall be served by __~~N/A~~ 9/25/24_____. [*Absent exceptional circumstances, a date not more than thirty (30) days following the initial pretrial conference.*] No Rule 33.3(a) interrogatories need to be served with respect to disclosures automatically required by Federal Rule of Civil Procedure 26(a). Contention interrogatories may be served at any time but only with leave of the Court.

   c. Unless otherwise ordered by the Court, contention interrogatories should be served consistent with Rule 33.3(c) of the Local Rules of the Southern District of New York.

   d. Depositions shall be completed by ___Jan. 13, 2025_____.

   e. Requests to Admit shall be served no later than ___Dec. 11, 2024_____.

8. All expert discovery, including disclosures, reports, rebuttal reports, production of underlying documents, and depositions shall be completed by ____[Parties do not currently anticipate that expert discovery will be necessary, but reserve the right to request it as discovery proceeds.]_N/A_____.[*Absent exceptional circumstances, a date forty-five (45) days from the completion of fact discovery*.]

9. All discovery shall be completed no later than _____Jan. 13, 2025_____.

10. The proposed joint pretrial order shall be submitted on ECF in accordance with the Court's Individual Practices in Civil Cases and Federal Rule of Civil Procedure 26(a)(3) no later than ___N/A_____.

11. A post-discovery status conference shall be held on: ___Jan. 17, 2025_____ at __2 p.m.__ . A joint letter updating the Court on the status of the case shall be filed on ECF by one

week prior to the status conference. The letter must be no more than three (3) single spaced pages and should include the following information in separate paragraphs:

(1) all existing deadlines, due dates, and/or cut-off dates;

(2) a brief description of any outstanding motions;

(3) a brief description of the status of discovery and of any additional discovery that remains to be completed;

(4) the status of settlement discussions;

(5) the anticipated length of trial and whether the case is to be tried to a jury;

(6) whether the parties anticipate filing motions for summary judgment; and any other issue that the parties would like to address at the pretrial conference or any other information that the parties believe may assist the Court.

12. Any motion for summary judgment must be filed no later than __N/A_____. [*Absent exceptional circumstances, a date fourteen (14) days from the completion of all discovery*.]

13. This case [is ____ / is not __X___] to be tried to a jury.

14. The parties have conferred and their present best estimate of the length of trial is _____[As discovery proceeds, parties will discuss whether they believe an evidentiary hearing is necessary.] _____.

15. Counsel for the parties propose the following alternative dispute resolution mechanism for this case:

a. _____ Referral to a Magistrate Judge for settlement discussions.

b. _____ Referral to the Southern District's Mediation Program.

c. __X__ Retention of a private mediator.

The use of any alternative dispute resolution mechanism does not stay or modify any date in this Order.

16. Other issues to be addressed at the Initial Pretrial Conference, including those set forth in Federal Rule of Civil Procedure 26(f)(3), are set forth below.

_____
_____See Appendix A, attached.
_____
_____
_____

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Dated: September 13, 2024
New York, New York

Dated: September 18, 2024

LEWIS J. LIMAN
United States District Judge

APPENDIX A

Appendix To ~~Levona's Proposed~~ Case Management Plan And Scheduling Order

Re: *Eletson Holdings, Inc. v. Levona Holdings Ltd.*, 23-cv-07331 (LJL)

The following ~~proposed~~ dates include and supplement those in the Court's ~~model~~ case management plan and scheduling order:

Date	Event
Wed, Sept. 18, 2024	Case management hearing
Wed., Sept. 25, 2024	Serve initial disclosures and initial document requests[1]
Wed., Oct. 2, 2024	Serve responses to initial document requests
Wed., Oct. 9, 2024	Complete meet & confer re discovery disputes and ESI protocol
Wed., Oct. 16, 2024	File ~~pre-conference~~ letter briefs and proposed ESI protocol *
~~***Thurs., Oct. 24, 2024***~~	~~***Status conference***[2]~~
Mon., Nov. 25, 2024	~~Substantial~~ completion of party document productions[3]
Wed., Nov. 27, 2024	Serve privilege logs
Wed., Dec. 11, 2024	Complete meet & confer re document production and privilege; serve RFAs
Mon., Dec. 16, 2024	File pre-conference letter briefs
Mon., Dec. 23, 2024	***Status conference***[2] at 12 p.m. at Courtroom 15C, 500 Pearl St. New York, NY 10007
Fri., Jan. 10, 2025	File pre-conference letters per Model CMP ¶ 11
Mon., Jan. 13, 2025	Complete discovery[4]
Fri., Jan. 17, 2025	***Post-discovery status conference per Model CMP ¶ 11***[2]
Mon., Jan. 27, 2025	Levona files opening brief
Mon., Feb. 10, 2025	Eletson files opposition brief
Mon., Feb. 24, 2025	Levona files reply brief
~~***Mon., Mar. 10, 2025***~~	~~***Oral argument (and evidentiary hearing as appropriate)***~~

Notes:

1. ~~Parties may serve contention interrogatories at any time, notwithstanding L.R. 7033-1.~~
2. Proposed date is an estimate subject to the Court's availability.
3. All documents are to be produced on a rolling basis.
4. Parties reserve rights to seek expert discovery, if deemed necessary.

* The letter briefs due on October 16, 2024 shall address deficiencies in the responses to the discovery requests or to the ESI protocol and any other issues requiring the Court's resolution that are ripe. Motions relating to discovery disputes other than the sufficiency or propriety of the responses to the discovery requests or regarding the ESI protocol should be made as soon as the dispute is ripe, according to the Court's Individual Practices. This includes the failure to produce documents responsive to the requests or to comply with the ESI protocol.

EXHIBIT B

Voting Demonstrative

							Vote on EACH PLAN										Plan Preference Election			Plan Elections							
							Debtors' Plan				PC Plan				PC Alternative Plan					Debtors' Plan		PC Plan				PC Alternative Plan	
Sort	Type	Claimant Name/Broker Name	Record Date Broker Position	AccountNumber / Claim No.	Position / Voting or Claim Amount	Class	# Accept	Amount Accept	# Reject	Amount Reject	# Accept	Amount Accept	# Reject	Amount Reject	# Accept	Amount Accept	# Reject	Amount Reject	Debtors' Plan Row A	PC Plan Row B	PC Alternative Plan Row C	Litigation Trust Interest	Noteholder Election Recovery	Cash Election	GUC Equity Election	Convenience Class Election	Liquidation Trust Interest	Noteholder Election Recovery
1	Notes	BOA/GWIM	$2,350,000			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
2	Notes	FID TR CO	$450,000			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
3	Notes	GOLDMAN	$14,035,219	3267	$6,404,208	Debtor Class 5 / PC Class 3 / PC Alt Class 5					1	$6,404,208											1	1				1
4	Notes	GOLDMAN		5527	$4,008,010	Debtor Class 5 / PC Class 3 / PC Alt Class 5			1	$4,008,010	1	$4,008,010					1	$4,008,010					1	1				1
5	Notes	GOLDMAN		5479	$1,162,000	Debtor Class 5 / PC Class 3 / PC Alt Class 5			1	$1,162,000	1	$1,162,000					1	$1,162,000					1	1				1
6	Notes	GOLDMAN		XXX5985	$2,459,000	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B					1	$2,459,000										1		1			1	
7	Notes	BROWN BROS	$32,890	549162	$32,890	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B	1	$32,890			1	$32,890			1	$32,890			1									
8	Notes	MSSB	$313,543	662048153	$184,000	Debtor Class 5 / PC Class 4 / PC Alt Class 5			1	$184,000	1	$184,000			1	$184,000					1		1			1		1
9	Notes	MSSB		662066214	$129,543	Debtor Class 5 / PC Class 4 / PC Alt Class 5			1	$129,543	1	$129,543			1	$129,543					1		1			1		1
10	Notes	JEFFERIES	$89,449	433-00436	$89,449	Debtor Class 5 / PC Class 4 / PC Alt Class 5			1	$89,449	1	$89,449			1	$89,449				1			1			1		1
11	Notes	VANGUARD	$137,079			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
12	Notes	BOFA	$7,000			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
13	Notes	CHS SCHWAB	$186,373	xxxx-8510	$65,779	Debtor Class 5 / PC Class 4 / PC Alt Class 5			1	$65,779	1	$65,779			1	$65,779					1		1			1		1
14	Notes	CHS SCHWAB		xxxx-0425	$120,594	Debtor Class 5 / PC Class 4 / PC Alt Class 5			1	$120,594	1	$120,594			1	$120,594					1		1			1		1
15	Notes	NFS LLC	$219,263	663050370	$109,631	Debtor Class 5 / PC Class 4 / PC Alt Class 5					1	$109,631								1			1			1		1
16	Notes	NFS LLC		344288519	$109,631	Debtor Class 5 / PC Class 4 / PC Alt Class 5					1	$109,631			1	$109,631				1			1			1		1
17	Notes	RBCCAPMKTS	$49,472	8R400056	$27,000	Debtor Class 5 / PC Class 3 / PC Alt Class 5			1	$27,000	1	$27,000			1	$27,000					1		1	1				1
18	Notes	WELLS FARG	$1			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
19	Notes	JPMS/JPMC	$25,368,940	XXX9422	$1,715,077	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B					1	$1,715,077										1		1			1	
20	Notes	JPMS/JPMC		XXX7876	$8,330,594	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B					1	$8,330,594										1		1			1	
21	Notes	JPMS/JPMC		XXX8946	$4,464,481	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B					1	$4,464,481										1		1			1	
22	Notes	JPMS/JPMC		XXX3566	$8,716,788	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B					1	$8,716,788										1		1			1	
23	Notes	JPMS/JPMC		XXX3786	$2,142,000	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B					1	$2,142,000										1		1			1	
24	Notes	PERSHING	$117,978	PH*003500	$117,978	Debtor Class 6A6B / PC Class 4 / PC Alt Class 5			1	$117,978	1	$117,978			1	$117,978					1	1				1		1
25	Notes	BANK OF NY	$39,412,270	458012	$13,406,029	Debtor Class 5 / PC Class 3 / PC Alt Class 5			1	$13,406,029	1	$13,406,029					1	$13,406,029					1	1				1
26	Notes	BANK OF NY		294315	$120,594	Debtor Class 5 / PC Class 3 / PC Alt Class 5			1	$120,594	1	$120,594					1	$120,594					1	1				1
27	Notes	BANK OF NY		394373	$1,748,608	Debtor Class 5 / PC Class 4 / PC Alt Class 5			1	$1,748,608	1	$1,748,608					1	$1,748,608					1			1		1
28	Notes	BANK OF NY		394959	$18,904,696	Debtor Class 5 / PC Class 3 / PC Alt Class 5			1	$18,904,696	1	$18,904,696					1	$18,904,696					1	1				1
29	Notes	BANK OF NY		899552	$5,482	Debtor Class 5 / PC Class 3 / PC Alt Class 5			1	$5,482	1	$5,482					1	$5,482					1	1				1
30	Notes	BANK OF NY		706081	$82,223	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B			1	$82,223	1	$82,223												1				
31	Notes	JPMCBNA	$164,446			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
32	Notes	CITIBANK	$76,742	089154F	$76,742	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B	1	$76,742			1	$76,742			1	$76,742						1		1			1	
33	Notes	SSB&T CO	$22,731,778	AAHG	$43,852	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B			1	$43,852	1	$43,852												1				
34	Notes	SSB&T CO		FPM2	$186,372	Debtor Class 5 / PC Class 4 / PC Alt Class 5					1	$186,372											1			1		1
35	Notes	SSB&T CO		JJ81	$1,423,004	Debtor Class 5 / PC Class 4 / PC Alt Class 5	1	$1,423,004			1	$1,423,004			1	$1,423,004					1		1			1		1
36	Notes	SSB&T CO		PRPJ	$2,209,056	Debtor Class 6A6B / PC Class 4 / PC Alt Class 6A6B			1	$2,209,056	1	$2,209,056														1		
37	Notes	SSB&T CO		PRPV	$345,336	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B			1	$345,336	1	$345,336												1				
38	Notes	SSB&T CO		SDME	$383,707	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B			1	$383,707	1	$383,707												1				
39	Notes	SSB&T CO		SFCQ	$504,301	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B			1	$504,301	1	$504,301												1				
40	Notes	SSB&T CO		2S3G	$4,759,063	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B			1	$4,759,063	1	$4,759,063					1	$4,759,063							1			
41	Notes	SSB&T CO		2S7X	$2,082,981	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B			1	$2,082,981	1	$2,082,981					1	$2,082,981							1			
42	Notes	MIRAE SEC	$697			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
43	Notes	EUROCLEAR	$1,370,383	G21691-7184888	$1,370,383	Debtor Class 6A6B / PC Class 4 / PC Alt Class 6A6B	1	$1,370,383			1	$1,370,383			1	$1,370,383				1		1				1		
44	Notes	FIFTH NA	$106,528			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
45	Notes	FID TR CO	$109,180			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
46	Notes	BNP/PPBC	$327,151	604-02313-23	$327,151	Debtor Class 5 / PC Class 3 / PC Alt Class 5			1	$327,151	1	$327,151					1	$327,151					1	1				1
47	Notes	NRTHRN TR	$1,556,756	1712637	$109,631	Debtor Class 5 / PC Class 4 / PC Alt Class 5					1	$109,631											1			1		1
48	Notes	NRTHRN TR		1734850	$109,631	Debtor Class 5 / PC Class 4 / PC Alt Class 5					1	$109,631											1			1		1
49	Notes	US BANK NA	$548,153	19-8354	$548,153	Debtor Class 5 / PC Class 4 / PC Alt Class 5			1	$548,153	1	$548,153			1	$548,153							1			1		1
50	Notes	PRIN BANK	$27,408			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
51	Notes	CURVESECLLC	$125,355,965	PACH0010	$125,355,965	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B			1	$125,355,965	1	$125,355,965			1	$125,355,965				1					1		
52	Notes	FIDUCIE	$822,230	908741/2	$822,230	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B			1	$822,230	1	$822,230								1				1				
53	Notes	BOFA/SFKPG	$200,000	92923315D9	$200,000	Debtor Class 5 / PC Class 4 / PC Alt Class 5			1	$200,000	1	$200,000			1	$200,000				1			1			1		1
54	Notes	CLEAR STRT	$1,523,865	108484	$761,933	Debtor Class 6A6B / PC Class 4 / PC Alt Class 6A6B			1	$761,933	1	$761,933			1	$761,933				1						1	1	
55	Notes	CLEAR STRT		100257	$487,636	Debtor Class 6A6B / PC Class 4 / PC Alt Class 6A6B			1	$487,636	1	$487,636			1	$487,636				1						1	1	
56	Notes	CLEAR STRT		100256	$274,296	Debtor Class 6A6B / PC Class 4 / PC Alt Class 6A6B			1	$274,296	1	$274,296			1	$274,296				1						1	1	
57	Notes	GOLDMAN	$1,470,000	3267	$1,054,000	Debtor Class 5 / PC Class 3 / PC Alt Class 5					1	$1,054,000											1	1				1
58	Notes	GOLDMAN		5985	$416,000	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B					1	$416,000										1		1			1	
59	Notes	JPMS/JPMC	$4,320,000	xxx3566	$1,497,000	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B					1	$1,497,000										1		1			1	
60	Notes	JPMS/JPMC		xxx3786	$364,000	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B					1	$364,000										1		1			1	
61	Notes	JPMS/JPMC		xxx8946	$758,000	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B					1	$758,000										1		1			1	
62	Notes	JPMS/JPMC		xxx9422	$291,000	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B					1	$291,000										1		1			1	
63	Notes	JPMS/JPMC		xxx7876	$1,410,000	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B					1	$1,410,000										1		1			1	
64	Notes	BROWN BROS	$200,000	549162	$200,000	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B	1	$200,000					1	$200,000			1	$200,000	1				1					
65	Notes	MSSB	$98,000			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
66	Notes	NFS LLC	$80,000			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
67	Notes	RBCCAPMKTS	$54,000	XXXXX9808	$47,000	Debtor Class 5 / PC Class 4 / PC Alt Class 5			1	$47,000	1	$47,000			1	$47,000					1		1			1		1
68	Notes	INT BROKER	$73,000			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
69	Notes	BANK OF NY	$115,000			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
70	Notes	CITIBANK	$131,000			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
71	Notes	EUROCLEAR	$140,000			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
72	Notes	BNY/FMSB	$5,000	G00000768012	$5,000	Debtor Class 5 / PC Class 4 / PC Alt Class 5			1	$5,000	1	$5,000			1	$5,000					1		1			1		1
73	Notes	MLPFS/8862	$5,000			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
74	Notes	GOLDMAN	$4			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
75	Notes	BROWN BROS	$88,336			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
76	Notes	PERSHING	$685,078			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
77	Notes	INT BROKER	$64,045			Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B																						
78	Notes	BANK OF NY	$17,972,428	368197	$1,951,417	Debtor Class 5 / PC Class 4 / PC Alt Class 5			1	$1,951,417	1	$1,951,417			1	$1,951,417				1			1			1		1
79	Notes	BANK OF NY		458012	$16,010,047	Debtor Class 5 / PC Class 3 / PC Alt Class 5			1	$16,010,047	1	$16,010,047					1	$16,010,047					1	1				1
80	Notes	BANK OF NY		685004	$10,964	Debtor Class 5 / PC Class 3 / PC Alt Class 5			1	$10,964	1	$10,964			1	$10,964							1	1				1
81	Notes	CITIBANK	$4,130,554	089154A	$657,784	Debtor Class 5 / PC Class 3 / PC Alt Class 5			1	$657,784	1	$657,784			1	$657,784					1		1	1				1
82	Notes	CITIBANK		089154B	$5,618	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B	1	$5,618			1	$5,618			1	$5,618			1									
83	Notes	CITIBANK		089154C	$438,523	Debtor Class 5 / PC Class 3 / PC Alt Class 5	1	$438,523					1	$438,523			1	$438,523	1				1	1				1
84	Notes	CITIBANK		089154D	$219,262	Debtor Class 5 / PC Class 3 / PC Alt Class 5	1	$219,262					1	$219,262			1	$219,262	1				1	1				1
85	Notes	CITIBANK		089154E	$328,892	Debtor Class 5 / PC Class 3 / PC Alt Class 5	1	$328,892					1	$328,892			1	$328,892	1				1	1				1
86	Notes	EUROCLEAR	$2,479,968	G21691-7184857	$1,259,866	Debtor Class 6A6B / PC Class 4 / PC Alt Class 6A6B	1	$1,259,866			1	$1,259,866			1	$1,259,866				1		1			1		1	
87	Notes	CURVESECLLC	$58,760,892	PACH0010	$58,760,892	Debtor Class 5 / PC Class 3 / PC Alt Class 6A6B			1	$58,760,892	1	$58,760,892			1	$58,760,892				1				1		1		
88	Filed Claim	OCM Maritime Autumn LLC		7	$1.00	Debtor Class 1 / PC Class 5 / PC Alt Class 1	1	$1.00																				
89	Filed Claim	OCM Maritime Rhine LLC		5	$1.00	Debtor Class 1 / PC Class 5 / PC Alt Class 1	1	$1.00																				
90	Filed Claim	OCM Maritime Thames LLC		8	$1.00	Debtor Class 1 / PC Class 5 / PC Alt Class 1	1	$1.00																				
91	Filed Claim	OCM Maritime Yukon LLC		6	$1.00	Debtor Class 1 / PC Class 5 / PC Alt Class 1	1	$1.00											1									
92	Filed Claim	Aegean Baltic Bank S.A.		4	$6,335,665.08	Debtor Class 2 / PC Class 3 / PC Alt Class 2	1	$6,335,665.08					1	$6,335,665.08			1	$6,335,665.08	1									
93	Filed Claim	HERMES ACQUISITIONS B DAC SERVICED BY CEPAL HELLAS		16	$4,302,198.44	Debtor Class 2 / PC Class 3 / PC Alt Class 2	1	$4,302,198.44					1	$4,302,198.44			1	$4,302,198.44	1									
94	Filed Claim	SUNRISE I NPL FINANCE DAC		22	$16,402,504.90	Debtor Class 2 / PC Class 3 / PC Alt Class 2	1	$16,402,504.90					1	$16,402,504.90			1	$16,402,504.90	1									
95	Filed Claim	Azure Nova Autumn Co., Limited		11	$23,699,925.60	Debtor Class 3 / PC Class 3 / PC Alt Class 3	1	$94,799,702.40					1	$94,799,702.40			1	$94,799,702.40	1									
96	Filed Claim	Azure Nova Spring Co., Limited		9	$23,699,925.60	Debtor Class 3 / PC Class 3 / PC Alt Class 3	1	$94,799,702.40					1	$94,799,702.40			1	$94,799,702.40	1									
97	Filed Claim	Azure Nova Summer Co., Limited		10	$23,699,925.60	Debtor Class 3 / PC Class 3 / PC Alt Class 3	1	$94,799,702.40					1	$94,799,702.40			1	$94,799,702.40	1									
98	Filed Claim	Azure Nova Winter Co., Limited		12	$23,699,925.60	Debtor Class 3 / PC Class 3 / PC Alt Class 3	1	$94,799,702.40					1	$94,799,702.40			1	$94,799,702.40	1									
99	Scheduled Claim	AMA Capital Partners		Sched ID 3298141	$2,397,195.00	Debtor Class 4 / PC Class 3 / PC Alt Class 4			1	$2,397,195.00	1	$2,397,195.00			1	$2,397,195.00				1				1				
100	Scheduled Claim	Thompson Hine LLP		Sched ID 3298126	$8,225.00	Debtor Class 4 / PC Class 4 / PC Alt Class 4			1	$8,225.00	1	$8,225.00			1	$8,225.00				1								
101	Scheduled Claim	S&P Global Ratings Europe Ltd.		Sched ID 3298139	$298,144.00	Debtor Class 4 / PC Class 4 / PC Alt Class 4	1	$298,144.00					1	$298,144.00			1	$298,144.00	1									
102	Filed Claim	New Agathonissos Finance LLC		13	$5,155,522.00	Debtor Class 6A / PC Class 3 / PC Alt Class 6A			1	$5,155,522.00	1	$5,155,522.00			1	$5,155,522.00				1			1	1				1
103	Filed Claim	Department of Treasury - Internal Revenue Service		23	$319.97	Class 4 / PC Class 4 / PC Alt Class 4																						
104	Scheduled Claim	Intralinks Holdings, Inc.		Sched ID 3298137	$29,112.00	Class 4 / PC Class 4 / PC Alt Class 4																						
105	Scheduled Claim	Regus Management Group LLC		Sched ID 3298124	$741.70	Class 4 / PC Class 4 / PC Alt Class 4																						
106	Scheduled Claim	Regus Management Group LLC		Sched ID 3298136	$1,547.34	Class 4 / PC Class 4 / PC Alt Class 4																						

To aid in the Court's review of the creditor vote, the Committee and Petitioning Creditors have created the above demonstrative based on the plan election spreadsheet provided by Verita and included in the trial record at CRX-131/DX-301 (the "Verita Election Spreadsheet")[1]. The changes and annotations to the Verita Election Spreadsheet are discussed below.

Demonstrative Key

I. Highlighting Convention

Claims have been highlighted based on the plan(s) the respective claim voted to accept:

- Voted to accept only the PC Plan.
- Voted to accept only the Debtors' Plan.
- Voted to accept only the PC Alternative Plan.
- Voted to accept two or more plans.
- Did not vote to accept any plan.

If a holder voted to accept more than one plan and made a plan preference election, the rows for the respective claim have been highlighted as follows:

- Elected a preference for the PC Plan.
- Elected a preference for the Debtors' Plan.
- Elected a preference for the PC Alternative Plan.

II. Legibility Changes

The Committee and Petitioning Creditors have made the following additional changes to the Plan Election Spreadsheet for legibility and clearly presenting the results of plan voting:

1. Removed rows 107-134, which reflect claims that did not submit ballots.
2. Removed columns titled: "CUSIP", "Nature", "Debtor", "Item 3 Exemptions", and "Non Voting Notes for Claims[.]"

To view in hard-copy form, we suggest printing the demonstrative in color, on 11" x 17" paper, in landscape format. Copies of the demonstrative printed in this format will be delivered to the Court.

III. Additional Annotations

Please also note that:

1. Rows 89-91 refer to the OCM Guaranty Claims, which were unimpaired under, and not eligible to vote on, the PC Plan or the PC Alternative Plan.
2. Rows 83-85 and 88-98 refer to the Settlement Claims and the Insider Claims, and have been marked red in the left-most column of the demonstrative.
3. Note that OCM Maritime Yukon LLC (row 91) is marked as expressing a preference for the Debtors' Plan in the Verita plan election spreadsheet at CRX-131, but that election is not marked in the declaration of Verita's James Lee at CRX-191.

1. Capitalized terms not defined herein shall have the meaning set forth in the joint post-trial brief of the Committee and Petitioning Creditors.