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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
	:	
ELETSON HOLDINGS INC., <sup>1</sup>	:	Case No. 23-10322 (JPM)
	:	
Debtor.	:	
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**MEMORANDUM OF LAW IN SUPPORT OF THE ENTRY OF  
AN ORDER AUTHORIZING AND DIRECTING MICROSOFT CORPORATION  
TO (I) SUSPEND EXISTING ACCOUNT ACCESS FOR ACCOUNTS MAINTAINED  
BY ELETSON CORPORATION AND (II) PROVIDE ADMINISTRATOR LEVEL  
ACCOUNT ACCESS TO ELETSON HOLDINGS, INC. AND ITS DESIGNEES**

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



TO THE HONORABLE JOHN P. MASTANDO III  
UNITED STATES BANKRUPTCY JUDGE:

Eletson Holdings Inc. ("Holdings"), by and through its undersigned counsel, hereby submits this memorandum of law (this "Memorandum"), in support of its motion by order to show cause (the "Motion") for entry of an order, substantially in the form attached to the Motion as **Exhibit A** (the "Proposed Order"), authorizing and directing Microsoft Corporation ("Microsoft") to:

- (i) suspend all existing user accounts other than those belonging exclusively to employees or agents of Microsoft (collectively, the "Old Accounts"), including, but not limited to, the accounts of the former management and employees of the Debtors and their affiliates and subsidiaries (collectively, with the Debtors' former management, the "Former Management") operating under the name Eletson (collectively, the "Company") through which Old Accounts Microsoft provides or provided access to the books and records (the "Books and Records") of Holdings, Eletson Corporation ("Corp."), or any of Holdings affiliates or subsidiaries maintained by Microsoft on its business-related applications, data platforms, cloud-based computing services, and back-up recovery systems, among other types of services (collectively, the "Microsoft Services"); and
- (ii) provide administrator level access to the Microsoft Services and the Books and Records by creating new accounts (the "New Accounts") for Holdings and its designees.

In support of this Memorandum and entry of the Proposed Order, Holdings submits the accompanying *Declaration of Kyle J. Ortiz* (the "Ortiz Declaration"), and respectfully states:

**PRELIMINARY STATEMENT**<sup>1</sup>

1. This Motion seeks critical relief necessary to secure Holdings' assets and enforce the Court-approved chapter 11 plan of reorganization. Since the Plan's Effective Date, Former Management—whose interests were extinguished under the Plan and whose authority was terminated by operation of law—has refused to cooperate with the transition of control required by the Plan and Confirmation Order. Their continued obstruction not only impedes Holdings' ability to implement the Plan but creates a serious risk of sabotage or destruction of corporate data and records.

2. To protect against that risk, Holdings asked Microsoft to suspend the Old Accounts controlled by Former Management and to establish New Accounts under Holdings' exclusive control. Microsoft has informed Holdings that it requires a court order before taking such action.

3. The risk of digital sabotage is not hypothetical. On May 25, 2025, a court-appointed ship master boarded the Kinaros—a vessel operated by one of Holdings' four wholly owned shipping subsidiaries—in connection with arrest proceedings in Trinidad. He discovered that the vessel's entire IT infrastructure had been deliberately incapacitated. Navigation systems, operational servers, and administrative terminals had been rendered inoperable; passwords invalidated; databases wiped; and key terminals stripped of all system integrity. The ship master concluded that the actions were not accidental, but deliberate and calculated acts of sabotage executed by Former Management. These events—occurring while the vessel was under arrest and under judicial supervision—underscore the urgency of securing

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<sup>1</sup> Capitalized terms used in this Preliminary Statement have the meanings ascribed to such terms below.

administrator-level access to the Company's digital infrastructure before further damage is done.

4. The Bankruptcy Code and this Court's prior orders provide ample authority to grant the relief requested. Sections 1142 and 105 authorize the Court to issue any order necessary to consummate a confirmed plan, including orders directed at third parties like Microsoft. Section 542(e) further empowers the Court to compel turnover of recorded information relating to a debtor's business. That is precisely what Holdings seeks here: an order directing Microsoft to facilitate the transition of control by suspending the Old Accounts and creating New Accounts that preserve and protect the Company's Books and Records.

5. Holdings' request is narrowly tailored, grounded in statutory authority, and essential to effectuating the transition of management and control mandated by the Plan. Absent this relief, implementation of the Plan will remain vulnerable to further sabotage, and there is substantial risk of irreparable harm to Holdings' successful reorganization.

#### **JURISDICTION AND VENUE**

6. The United States Bankruptcy Court for the Southern District of New York (this "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.) (the "Amended Standing Order"). Pursuant to Federal Rule of Bankruptcy Procedure 7008 (collectively, the "Bankruptcy Rules"), Holdings confirms its consent to the Court's exercise of jurisdiction to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

7. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

8. Pursuant to section 11.1 of the operative chapter 11 plan [Docket No. 1132, Ex. 1] (the “Plan”) and paragraph WW of the order confirming the Plan [Docket No. 1223] (the “Confirmation Order”), the Court retains exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases,<sup>2</sup> including the matters set forth in Article XI of the Plan and section 1142 of title 11 of the United States Code (the “Bankruptcy Code”). In particular, the Court retains jurisdiction to “enter such orders as may be necessary or appropriate to implement or consummate the provisions of [the] Plan.” See Plan § 11.1(d); see also Confirmation Order ¶ WW (“The Court may, and upon the Effective Date, shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases, including the matters set forth in Article XI [of] the Plan and section 1142 of the Bankruptcy Code.”).

## **BACKGROUND**

### **A. General Background**

#### **(1) The Plan and Confirmation Order**

9. On October 25, 2024, the Court issued a decision [Docket No. 1212] (the “Confirmation Decision”), among other things, confirming the Plan and overruling objections [Docket Nos. 1029, 1033] by the Debtors and former majority shareholders Lassia Investment Company, Family Unity Trust Company, and Glafkos Trust Company (the “Former Majority Shareholders”). The Court entered the Confirmation

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<sup>2</sup> The Chapter 11 Cases are defined, collectively, as *In Eletson Holdings Inc.*, Case No. 23-10322 (JPM) (Bankr. S.D.N.Y.), *In re Agathonissos Finance LLC*, Case No. 23-10321 (JPM) (Bankr. S.D.N.Y.), and *In re Eletson Finance (US) LLC*, Case No. 23-10323 (JPM) (Bankr. S.D.N.Y.), the latter two of which were terminated on March 5, 2025. See [Docket No. 1515].

Order on November 4, 2024. *See* [Docket No. 1223].

10. On November 19, 2024, the Plan was substantially consummated and the “Effective Date” (as defined in the Plan) occurred. *See* [Docket No. 1258] (Notice of Effective Date) at 2.

**(2) The Consummation and Sanctions Orders  
Reflecting Post-Effective Date Obstruction**

11. Following the Effective Date, as has been detailed extensively in prior filings, orders, and decisions of this Court in the Chapter 11 Cases, the Former Management, and affiliated entities under their control, have frustrated Holdings’ attempts to effectuate and implement the Plan. *See, e.g.*, [Docket Nos. 1223, 1402, 1468, 1495, 1520, 1536, 1537].

12. As a result, this Court has been required to issue multiple orders directing compliance with the Plan and Confirmation Order due to Former Management’s continual refusal to cooperate. On January 24, 2025, the Court issued an oral decision granting Holdings’ first sanctions motion [Docket No. 1402, Ex. A], which culminated in entry of the Consummation Order on January 29, 2025. *See* Docket No. 1402 (the “Consummation Order”). In that order, the Court “authorized, required, and directed” the Debtors and their Related Parties—including Former Management and the Former Shareholders—to support the Plan’s implementation. *See* Consummation Order ¶¶ 1–2.

13. When those parties failed to comply, Holdings filed a second sanctions motion, leading the Court to issue a February 20, 2025 decision again finding noncompliance and affording “one final opportunity” for the Ordered Parties to update Holdings’ address of record (the “AOR”). *See* [Docket No. 1468], Ex. A at 103:13–23, 105:5–9. When compliance still did not follow, the Court entered the AOR Sanctions

Order on February 27, 2025, which imposed coercive sanctions against Former Management, the Former Shareholders, and their affiliates. *See* Docket No. 1495. Those parties have never complied.

14. On March 13, 2025, following a third sanctions motion and an evidentiary hearing on the preceding day, the Court entered another order [Docket No. 1537] (the “Foreign Opposition Sanctions Order”), holding the Former Shareholders and others in contempt for violating the Confirmation and Consummation Orders. Those violating parties have never complied with the Foreign Opposition Sanctions Order.

**B. Former Management’s Ongoing Defiance of Court Orders; Threats to the Company’s IT Systems**

15. Without the cooperation of the Former Management, Holdings remains unable to effectively manage the Company and realize the value of its assets pursuant to the Plan.

16. The Former Management’s commitment to frustrating Holdings’ attempts to effectuate and implement the Plan are such that there remains little or no likelihood that the Former Management will willingly suspend their Old Accounts and create New Accounts for Holdings and its designees with administrator level access.<sup>3</sup> In addition, the Former Management’s conduct since entry of the Confirmation Order

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<sup>3</sup> For example, former counsel to the Debtors, Reed Smith LLP (“Reed Smith”), has refused to turn over the Debtors’ client file to replacement counsel, resulting in an order of the Southern District of New York (the “District Court”) requiring such turnover. *See Eletson Holdings Inc., et al v. Levona Holding Ltd.*, No. 23-cv-7331-LJL (S.D.N.Y) [Docket No. 295]. That order is on appeal to the Second Circuit. Reed Smith has similarly refused to provide documents responsive to subpoenas served upon it in the District Court. *See id.* [Docket No. 334] (Reed Smith objecting to compliance with request for production), [Docket No. 341] (order requiring Reed Smith to comply with prior subpoena), [Docket No. 349] (request by Reed Smith to limit its compliance with subpoena) [Docket No. 360] (denying Reed Smith request to limit compliance and characterizing the request as a “disguised, and ill-founded, request for reconsideration”). Parties related to the Former Shareholders have similarly sought to evade subpoena requests. *See id.* [Docket No. 335].

leaves a heightened risk that, if given the opportunity, they will cause the Books and Records to be deleted, altered, or otherwise sabotaged before Microsoft creates New Accounts, including by transferring Books and Records to unknown persons beyond the jurisdictional reach of this Court. Moreover, in light of their pattern of defying orders of this Court since entry of the Confirmation Order, there is also a heightened risk that the Former Management—if given the opportunity—will attempt to frustrate any order issued by this Court directed at Microsoft.

17. The most recent and troubling example of the Former Management's obstruction involves the vessel Kinaros, which is currently the subject of arrest proceedings in the High Court of the Republic of Trinidad and Tobago (the "Kinaros Arrest Proceedings"). *See* [Docket No. 1671]. On May 19, 2025, the Trinidad Court overseeing the Kinaros Arrest Proceedings entered an order (the "May 19 Order"), which, among other things, appointed a new ship master at Holdings' request. *See* Ortiz Decl., Ex. 5. On May 25, 2025, the court-appointed ship master in the Kinaros Arrest Proceeding boarded the vessel and reported that the Kinaros had been rendered digitally inoperable. *See id.* Ex. 6 (the "May 25 Report"). As detailed in the ship master's May 25 Report, the vessel's critical IT infrastructure—including navigation systems, operational servers, and administrative terminals—had been intentionally wiped or disabled. *See id.* at 1. Passwords were invalidated, historical records deleted, and digital connectivity severed. *See id.* The ship master concluded that these actions were deliberate and calculated, taken by Former Management after vacating control of the vessel. *See id.* This conduct not only reflects a blatant disregard for maritime and corporate governance standards but confirms that the Former Management, if given notice of the relief requested by this Motion and/or left in control

of Company accounts, would not hesitate to sabotage, delete, or abscond with critical corporate records. *See id.*

18. In connection with Holdings' efforts to obtain information concerning the Company, Holdings requested that Microsoft suspend the Old Accounts and create New Accounts providing it with administrator access to the Books and Records. *See* Ortiz Decl., Exs. 1-4

19. Microsoft, however, requires an order from this Court before doing so. *Id.* Ex. 3.

### **ARGUMENT**

20. Section 5.2(c) of the Plan provides that "all property in each Estate, including all Retained Causes of Action . . . including interests held by the Debtors in their respective non-Debtor direct and indirect subsidiaries and Affiliates shall vest in [] Holdings, free and clear of all Liens, Claims, charges, or other encumbrances[.]" Plan § 5.2(c); *see also* Confirmation Order ¶ 7.

21. Paragraph 5(i) of the Confirmation Order requires the Debtors and their Related Parties to "cooperate in good faith to implement and consummate the Plan." Confirmation Order ¶ 5(i). The Plan defines "Related Parties" to include the Debtors' subsidiaries and affiliates, along with their respective current and former officers, directors, principals, and equity holders.<sup>4</sup> *See* Plan § 1.124. Former

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<sup>4</sup> The Plan defines "Related Parties" to mean subject to any exclusions expressly set forth in the Plan, (a) any Entity or Person; (b) such Entity's or Person's predecessors, predecessors in interest, successors and assigns, parents, owners, subsidiaries, affiliates, affiliated investment funds or investment vehicles, managed or advised accounts, funds, or other entities, and investment advisors, sub-advisors, or managers; (c) with respect to each of the foregoing in clauses (a) and (b), such Entity's or Person's respective current and former officers, directors, principals, equity holders (regardless of whether such interests are held directly or indirectly, and any fund managers, fiduciaries, or other agents with any involvement related to the Debtors), members, partners, employees, agents, sub-agents, trustees, advisory board members, financial advisors, attorneys, accountants, actuaries, managers, investment managers, investment bankers, consultants, representatives, management companies, fund advisors and other professionals; and (d) with respect

Management plainly fall within this definition and are therefore subject to the Plan's cooperation mandate. Nevertheless, Former Management have refused to cooperate with Holdings' efforts to transition control of the Company as required under the Plan, including by failing to provide access to the Company's books and records or to respond meaningfully to Holdings' information requests necessary to effectuate the post-confirmation management transfer. Ortiz Decl. ¶ 4; *id.* Exs. 7-10.

22. Moreover, Section 1142 of the Bankruptcy Code authorizes the Court to direct any necessary party to perform any act that is necessary for the consummation of a plan of reorganization. 11 U.S.C. § 1142(b). This authority "extends to post-confirmation matters concerning implementation or execution of the plan." *Weigel as Trustee of JNL/Forcione Distribution Trust v. Barnard*, 661 B.R. 16, 25 (E.D.N.Y. 2021); *see also Mueller Industries, Inc. v. Sharon Steel Corp.*, No. 92 Civ. 1235 (MBM), 1992 WL 116314, at \*2 (S.D.N.Y. May 22, 1992) ("[T]he bankruptcy court as a branch of the district court is empowered to oversee the reorganization and issue orders necessary to ensure that it proceeds in compliance with the terms of the approved plan."); Docket No. 1204, Ex. B (Jan. 24, 2025 Hr'g Tr.) at 29:11-13 ("[S]ection 1142(b) empowers the Court to enforce implementation of the plan terms that are not complied with.").

23. Furthermore, section 542(e) of the Bankruptcy Code authorizes the Court to order a person holding recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs to turn over or disclose such recorded information. 11 U.S.C. § 542(e).<sup>5</sup> Section 5.15 of the Plan

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to each of the foregoing in clauses (a)–(c), such Entity's or Person's respective heirs, executors, estates, servants, and nominees.

<sup>5</sup> While section 542(e) refers to a "trustee," it is well established that a debtor may invoke the statute. *See In re American Metrocomm Corp.*, 274 B.R. 641, 651 (Bankr. D. Del. 2002) ("Section 1107 provides that 'a debtor in possession shall have all the rights . . . and powers . . . of a trustee serving in a case under this chapter.' Therefore, . . . [the debtor] is entitled to seek turnover of the Attorney Files as

specifically preserves Holdings' Claims and Causes of Action (each as defined in the Plan) and authorizes Holdings to enforce all rights to commence and pursue, as appropriate, any claims and causes of action belonging to the estates, including turnover pursuant to section 542 of the Bankruptcy Code. *See* Plan § 5.15 & Plan Supplement [Docket No. 914], Ex. D (Schedule of Retained Causes of Action). In addition, section 105 of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

24. Pursuant to the Plan, upon and following the Effective Date, (a) Eletson Finance (US) LLC and Agathonissos Finance LLC (collectively with Eletson Finance (US) LLC, the "Subsidiary Debtors"), were dissolved (Plan § 12.11), (b) the chapter 11 cases of the Subsidiary Debtors were closed with all proceedings consolidated in the chapter 11 case of Holdings (*see* [Docket No. 1515]), (c) control of the Debtors transferred to the Debtors' creditors, (Plan § 5.8), and Pach Shemen LLC and its nominee became the Debtors' majority shareholders, (d) all interests in the Debtors then held by Holdings' former shareholders (*i.e.*, the Former Majority Shareholders, Elafonissos Shipping Corporation, and Keros Shipping Corporation (collectively, the "Former Shareholders")) were extinguished (*id.* § 3.3(i)(ii)), (e) the Debtors' then-existing directors and officers were deemed to have resigned, (*id.* § 5.10(c)), and (f) a new board and CEO were appointed in their place, (*id.* § 5.10(a); *see* [Docket No. 1134], Ex. F (identifying Holdings' new directors and CEO)).

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debtor-in-possession.") (internal quotations omitted). Moreover, "recorded information subject to turnover under § 542(e) need not itself constitute property of the bankruptcy estate, but instead must either 1) relate to the property of the estate, or 2) relate to the debtor's financial affairs." *In re Xiang Yong Gao*, Case No. 14-4722-nhl, 2017 WL 2544132, at \*3 (Bankr. E.D.N.Y. June 12, 2017); *see also In re McKenzie*, 716 F.3d 404, 419 (6th Cir. 2013) ("[A]n action for turnover under § 542(e) does not require that the information be property of the estate.").

25. Thus, as a consequence of the effectiveness of the Plan, the Former Shareholders no longer have any interests in the Company, and Former Management no longer has any right to participate in the management or operation of the Company.

26. Here, section 542(e) of the Bankruptcy Code authorizes the Court to direct Microsoft to turn over access to the Microsoft Services and the Books and Records to Holdings. Per section 5.15 of the Plan, Holdings retains its right to seek the relief set forth in the Proposed Order notwithstanding confirmation of the Plan.

27. The Court can and should direct Microsoft to suspend the Old Accounts and provide administrator level access to the Books and Records by creating the New Accounts for Holdings and its designees. Holdings' interests in Corp. vested in Holdings on the Effective Date pursuant to section 5.2(c) of the Plan and paragraph 7 of the Confirmation Order. Former Management's failure to provide such access has been frustrating Holdings' efforts to fully implement the Plan, gain control of the Company and transition its management, and therefore, cooperation from Microsoft is necessary to protect Holdings' interests and to enable full implementation of the Plan. By entering the Proposed Order, the Court will prevent the Former Management from sabotaging, absconding with, or otherwise refusing to turn over the Books and Records.

28. Other Bankruptcy courts have regularly granted relief analogous to that sought here, including orders compelling third parties to provide administrator-level access to critical business platforms. *See, e.g., Matter of Salubrio, L.L.C.*, No. BR 20-50578-RBK, 2022 WL 2027955, at \*1 (W.D. Tex. May 25, 2022), *aff'd sub nom. Matter of Salubrio, L.L.C.*, No. 22-50453, 2023 WL 3143686 (5th Cir. Apr. 28, 2023) (compelling non-debtor to provide administrator level access to accounts and data platforms relating to debtor's operations); *see also In re Pine Lake Property LP*, Case No. 25-90001 (ARP) (Bankr. S.D. Tex. Feb. 10, 2025), Docket No. 34 (granting debtor's request under sections 542(e)

and 105 to direct debtor's banking provider to appoint chief restructuring officer as sole signatory and account representative of all debtor's bank accounts); *In re Surefunding, LLC*, Case No. 20-10953 (LSS) (Bankr. D. Del. Jan. 3, 2025), Docket No. 562 (granting liquidating trustee's motion under section 542(e) to require former asset recovery and investigative services company to turn over all files, documents, communications, and other records associated with their work for the debtor to assist with the administration of the estate).

29. Accordingly, Holdings respectfully requests that the Court enter the Proposed Order authorizing and directing Microsoft to suspend the Old Accounts and provide administrator level access to the Microsoft Services and the Books and Records by creating the New Accounts for Holdings and its designees.

**NO PRIOR REQUEST**

30. No prior request for the relief sought herein has been made to this or any other court.

*[Concludes on following page.]*

**CONCLUSION**

For the foregoing reasons, Holdings respectfully requests that the Court enter the Proposed Order, substantially in the form attached to the Motion as **Exhibit A** and grant such other and further relief as may be just and proper.

Dated: New York, New York  
May 29, 2025

TOGUT, SEGAL & SEGAL LLP  
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/s/Kyle J. Ortiz

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