UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: ELETSON HOLDINGS, INC., *et al.*, Debtors.	Case No. 23-10322 (JPM) Chapter 11 (Jointly Administered) **Related Docket No: 1673, 1674, 1675**

MICROSOFT CORPORATION'S RESPONSE TO ORDER TO SHOW CAUSE FOR 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

Eletson Holdings Inc. ("Holdings") seeks an order from this Court directing Microsoft Corporation ("Microsoft") to suspend certain unspecified "Old Accounts" associated with "Former Management" and create "New Accounts" in the name of Holdings representatives (the "Account Transfer"). Further, the Order to Show Cause directs Microsoft, on an interim basis, to immediately suspend the unspecified "Old Accounts" and preserve "Books and Records" in their current state (the "Preservation Order"). The Stored Communications Act, however, prohibits Microsoft from effecting the requested Account Transfer. Even if it did, Holdings has not provided sufficient information to identify the "Old Accounts," which further prevents Microsoft from implementing the Preservation Order. Microsoft, therefore, requests that the Court deny the requested relief.

Holdings' moving papers detail an alleged effort by other parties to frustrate the confirmed chapter 11 plan of reorganization in this case. Microsoft is a third party without any involvement in those allegations. None of the impacted ship-based systems referenced in the Memorandum of Law (Docket No. 1674) or the Declaration of Kyle Ortiz (Docket No. 1675) were manufactured by Microsoft, nor is there any indication that those systems utilized Microsoft software or other applications. The relief requested by Holdings does not include access to these non-Microsoft systems, nor do these unrelated allegations have any bearing on the relief requested herein.

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A. The Court should deny the requested relief because the Stored Communications Act prohibits Microsoft from implementing the requested Account Transfer.

1. The Court should deny the requested relief because Title II of the Electronic Communications Privacy Act ("ECPA"), 18 U.S.C. § 2510 to § 2711, known as the Stored Communications Act ("SCA"), prevents Microsoft from disclosing information contained within customer accounts without the consent of the existing account holder. *In re Irish Bank Resolution Corporation Limited (in Special Liquidation)*, 559 B.R. 627, 652-53 (Bankr. D. Del. 2016). Such unauthorized actions could subject Microsoft to serious civil and criminal penalties. 18 U.S.C. § 2707. The SCA does allow disclosure under certain enumerated exceptions. 18 U.S.C. § 2702(b)(1) to (9). However, the SCA does not provide an exception for circumstances such as this where two separate entities are vying for control of an account they are unable to specifically identify, let alone provide the consent required by the SCA.[1]

2. In its moving papers, Holdings ignores the complexity of this case and the limitations imposed on Microsoft by the SCA, and presents its petition as a conventional request for relief under Section 1142(b) to effectuate a chapter 11 plan, Section 542(e) to require turnover of a debtor's property, and Section 105(a) to impose "necessary and appropriate" relief. (Docket No. 1674, pages 8 to 10). Holdings cites three cases as authority for the requested relief.[2] However, none of those cases involves a request made directly to a provider of Remote Computing Services,[3] and the intersection between the Bankruptcy Code and the SCA.

3. In *Matter of Salubrio, L.L.C.*, the Fifth Circuit upheld a bankruptcy court order directing an individual account administrator for certain "IT Platforms" to provide a Subchapter V Trustee with administrator access to those platforms. 22-50453, 2023 WL 3143686, at *2 (5th Cir. Apr. 28, 2023). Notably, the court was not asked to impose this requirement on the underlying service

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[1] This fact is underscored by the letter filed by "Provisional Holdings" on June 1, 2025. Microsoft takes no position on the arguments asserted by Provisional Holdings, but the simple fact that there is a dispute over control of the account warrants scrutiny given the limitations of the SCA.

[2] *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) (); *In re Pine Lake Property LP*, Case No. 25-90001 (ARP) (Bankr. S.D. Tex. Feb. 10, 2025), Docket No. 34; and *In re Surefunding, LLC*, Case No. 20-10953 (LSS) (Bankr. D. Del. Jan. 3, 2025).

[3] 18 U.S.C. § 2711(2).

providers, but rather a third-party administrator, and the SCA was never raised or addressed. *Id*. The facts contained in *Pine Lake Property LP* and *Surefunding, LLC* are even further attenuated from the present case. In both, the courts imposed relatively common Section 542(e) turnover obligations against financial institutions and a former asset recovery and investigation service, neither of which is applicable here. *In re Pine Lake Property LP*, Case No. 25-90001 (SRP) (Bankr. S.D. Tex. Feb. 10, 2025); *In re Surefunding, LLC* Case No. 20-10953 (LSS) (Bankr. D. Del. Jan. 3, 2025). Accordingly, these cases do not support the requested relief.

4.   In the absence of an applicable exception under the SCA, the Court cannot require Microsoft to implement the Account Transfer because doing so would result in a violation of the SCA. *In re Irish*, 559 B.R. at 652-53 (Bankr. D. Del. 2016) (*quoting In re U.S. Fidelis, Inc.*, 481 B.R. 503, 515 (Bankr. E.D. Mo. 2012)) (holding that a "bankruptcy court may not order relief that results in a violation [of] the U.S. Constitution or other federal law."). Here, the requested Account Transfer, particularly in the midst of a control dispute between Holdings and Provisional Holdings, would violate the SCA, and therefore, the Court should deny the requested relief.

5.   Notably, Microsoft informed Holdings of the limitations imposed by the SCA in response to Holdings' initial letter and provided tools and guidance on how to go about implementing the requested Account Transfer through Eletson's current "Global Administrator." *See* Ortiz. Decl. at page 9 to 10. This approach accurately reflects Microsoft's systems and the manner in which account transfers are implemented within the Microsoft ecosystem.[4] Microsoft's guidance to Holdings mirrors the actions taken by the trustee in the *Salubrio* case cited in Holdings' brief. Holdings has instead chosen to pursue its current course to seek relief directly from Microsoft in a way that would force Microsoft to violate the SCA and potentially the privacy and rights of third

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[4] To effectuate a valid account transfer, Microsoft would designate a new "Global Administrator" for the applicable tenant. Microsoft does not effectuate an account transfer through the suspension of "old" user accounts or the creation of "new" ones. That process falls under the Global Administrator's purview.

parties.[5] Former Management's unwillingness to comply does not justify an order directing Microsoft to take actions that would constitute a violation of the SCA.

B. The Court should deny the requested relief because Holdings has not provided Microsoft with sufficient information to implement the Preservation Order.

6.   The Court should deny the requested relief because Holdings has not provided Microsoft with sufficient information through the Order to Show Cause and supporting pleadings to identify accounts associated with Eletson Holdings Inc., Eletson Corporation, or the affiliated Debtors (the "Eletson Entities").

7.   Following service of the Order to Show Cause, Microsoft initiated a search to determine if a "Direct" contract and billing relationship exists between Microsoft and the Eletson Entities. Declaration of Patrick Gogerty (hereafter "Gogerty Decl.") at ¶2. This search did not reveal any such relationship for Microsoft accounts originating within the United States, Europe, the Middle East, or Africa. *Id*.

8.   If the Eletson Entities have an account with Microsoft, it is possible that they contracted with a third-party to purchase Microsoft services, resulting in an "Indirect" relationship with Microsoft. Gogerty Decl. at ¶3. In an Indirect relationship, a licensed Microsoft Reseller Partner contracts directly with the end user for Microsoft services and retains the billing relationships. *Id*. In these instances, Microsoft has far less visibility into the end user's account, and there is no tool or application-based method for Microsoft to search for an account based solely on an entity's name. *Id*.

9.   For Microsoft to search for the account of an Indirect user of Microsoft services, it requires additional information including the associated: (1) tenant identification number ("Tenant ID"), (2) subscription identification number/s ("Subscription ID"), and (3) associated web domain name/s ("Domain"). Gogerty Decl. at ¶4. This information is not contained in Holdings pleadings. Even if provided with this information, it can be challenging to isolate the exact location of customer

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[5] Issuing an order like the one requested here would be unworkable and fail to provide the access and control it seeks. And, an order that fails to accurately reflect how Microsoft's systems work and fails to provide accurate information identifying the targeted account could result in harm to third parties.

data because Reseller Partners may provision Microsoft services through different methods based on business size and geographic location. *Id.* For example, a Reseller Partner may have its own Microsoft Tenant under which it houses Subscriptions for multiple customers. *Id.* Additionally, a customer may have numerous Domains registered under multiple Tenants. *Id.* For these reasons, Holdings should seek the requested relief from the Reseller Partner that provides its services, if indeed it contracts with such a partner.

10. Nonetheless, to resolve this situation and clarify these issues, Microsoft informally asked Holdings to provide any known Tenant IDs and Domains to help identify the accounts. Gogerty Decl. at ¶5. In response, Holdings informally provided Microsoft with one Tenant ID, one Domain, and the name of a possible Greek Reseller Partner called SysteCom on Thursday, May 29, 2025, and Microsoft immediately submitted a search request to determine if there is data associated with the tenant. *Id.* As of the date of this Response Brief, however, that search has not yielded any results. *Id.*

11. The Court should, therefore, deny the requested relief because Microsoft cannot implement the Preservation Order without additional information from Holdings.

C. Holdings should engage Eletson's Reseller Partner to identify tenants associated with the Eletson Entities and effectuate the requested Account Transfer.

12. Consistent with Microsoft's prior advice to Holdings and given the strong likelihood that the Eletson Entities contracted with one or more Reseller Partner for Microsoft services, Holdings should identify its Reseller Partner and work with it to determine the following information:

    a. The Tenant ID or IDs associated with the Eletson Entities;

    b. Whether the Tenant ID associated with an Eletson Entity is exclusive or shared with other Reseller Partner customers;

    c. The Subscription ID/s for the services associated with the identified Tenant ID;

    d. All Domains associated with the Tenant ID; and

    e. The identity of the global administrator associated with the Tenant.

13. With this information, Holdings can then work directly with the Reseller Partner to designate a new Global Administrator for any Eletson Entity Tenants and effectuate the requested Account Transfer.

CONCLUSION

The Court should deny Holdings' requested relief because the Stored Communications Act prohibits Microsoft from effecting the requested Account Transfer, and Holdings has provided insufficient information for Microsoft to implement the Preservation Order.

Dated: June 2, 2025.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 2, 2025, a true and correct copy of the foregoing was served via the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of New York to all parties registered to receive such notice.

/s/ Robin I. Solomon
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