Lawrence M. Rolnick
Richard A. Bodnar
Frank T.M. Catalina
Justin B. Harris
ROLNICK KRAMER SADIGHI LLP
PENN 1, Suite 3401
One Pennsylvania Plaza
New York, New York 10119
Tel.: 212.597.2800
Fax: 212.597.2801
E-mail: lrolnick@rksllp.com
rbodnar@rksllp.com
fcatalina@rksllp.com
justinharris@rksllp.com

Counsel for Majority Shareholders

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
ELETSON HOLDINGS INC. *et al.,*	Case No. 23-10322 (JPM)
Debtors. [1]	(Jointly Administered)

LASSIA INVESTMENT COMPANY'S, GLAFKOS TRUST COMPANY'S, AND FAMILY UNIT TRUST COMPANY'S OPPOSITION TO ELETSON HOLDINGS INC.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

[1] Prior to November 19, 2024, the Debtors in these cases were: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC. 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 Herbert Smith Freehills Kramer, 1177 Avenue of the Americas, New York, NY 10036.

2310322250902000000000001

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Other Authorities

Rules

Lassia Investment Company, Glafkos Trust Company, and Family Unit Trust Company (collectively, the "Majority Shareholders") submit the following opposition to Eletson Holdings' ("Reorganized Holdings") Motion to Compel Production of Documents ("Motion" or "Mot.") sought through subpoenas to the Majority Shareholders (the "Subpoenas").

PRELIMINARY STATEMENT

The fundamental danger of *ex parte* orders is that a Party (here, Reorganized Holdings) will put before the Court an order the Court has no power (or reason) to issue—and, without taking the critical steps *necessary* as officers of the Court to apprise the Court of either the law or the facts, counsel will elicit an order that creates far more problems than it solves. That is what has occurred here. Had Reorganized Holdings made a motion, instead of an *ex parte* application, the Court would have been properly apprised of the law and the facts and all actual Parties (and "parties in interest") would have been saved the effort of briefing on a motion to compel compliance with the Subpoenas, which are improper under Federal Rule of Civil Procedure ("Rule") 45. As Reorganized Holdings admits, when it comes to subpoenas, "[c]ompliance with . . . Rule 45[] is not optional." But the Subpoenas do not comply with Rule 45, as Rule 45 prohibits issuance of a subpoena to a foreign entity located overseas. This is why, via *footnote*, Reorganized Holdings makes the damning, and wrong, assertion that "strict compliance" with Rule 45 is not necessary. *Contrast* Mot. ¶ 13, *with* ¶ 13 n.5.

Knowing Rule 45 does not permit it to issue and serve the Subpoenas on the foreign Majority Shareholders, Reorganized Holdings instead claims it can avoid this prohibition by simply emailing the Subpoenas to counsel for the Majority Shareholders. Caselaw says otherwise. Neither email nor other service on counsel are permissible forms of service of a Rule 45 subpoena. Reorganized Holdings' failure to properly serve the Subpoenas is equally fatal to this motion.

Seeing its path under Rule 45 foreclosed, Reorganized Holdings pivots to claiming that the Majority Shareholders are "Parties" and thus Rules 26 and 34, which have no application to Rule 2004 subpoenas, allow the Subpoenas. This is simply wrong. Reorganized Holdings plays a word game with the Court, mixing and matching capital-P "Parties" as contemplated by the Federal Rules of Civil Procedure, and a bankruptcy term of art, "parties in interest," that does not and cannot mean what Reorganized Holdings claims and is not found in the Federal Rules of Civil Procedure. This pivot to using Rule 2004 discovery as Party discovery should be rejected.

And even if the pivot to "Parties" is countenanced, that pivot is thrice-fatal to Reorganized Holdings' motion. The Majority Shareholders recently commenced an adversary proceeding. The discovery sought by the Subpoenas directly overlaps with discovery that may be sought in that adversary proceeding. The pending proceeding rule bars such discovery. The very reasoning behind the rule—that Rule 2004 discovery of non-parties should not be used to circumvent the normal (and more limited) discovery devices available to parties in a pending proceeding—fits perfectly here. Reorganized Holdings' attempt to abuse Rule 2004 discovery should be rejected.

The three issues above are fatal to Reorganized Holdings' Motion. Even if they were not, enforcement of the Subpoenas is barred at least in part by Rule 45(c) and basic concerns about burden. First, on their face the Subpoenas demand that the Majority Shareholders produce testimony and documents in New York, thousands of miles from where they sit and transact business in Greece. Any ex-post attempt to modify the Subpoenas via briefing should be rejected.

If this Court determined to improperly ignore the multiple fatal defects with the Subpoenas, the Subpoenas themselves are hopelessly overbroad and unduly burdensome and the Court should require narrowly tailored Subpoenas to be issued before entertaining further motion practice.

BACKGROUND

On June 12, 2025, the Court issued an *ex parte* order (Dkt. No. 1693, which was revised as Dkt. No. 1698 or the "Order") permitting Reorganized Holdings to issue subpoenas pursuant to Federal Rules of Bankruptcy Procedure ("Bankruptcy Rule") 2004 and 9016, which make Federal Rule of Civil Procedure ("Rule") 45 applicable to the Subpoenas. (Dkt. No. 1698 at 1.) The Order authorized discovery targeting "implementation of the Plan . . . and the Confirmation Order"—nothing more. (*Id.*) The Order was entered pursuant to Eletson Holdings Inc.'s Ex Parte Application Pursuant to Bankruptcy Rule 2004 For an Order Authorizing the Issuance of Subpoenas for the Production of Documents and Deposition Testimony (the "Application").

The Application, and the *ex parte* Order issued from it, make clear that the relief requested is the issuance of *subpoenas*, subject to Bankruptcy Rule 9016 and Rule 45. The Application makes no mention of Rules 26 or 34, rules which have no applicability to subpoenas issued pursuant to Bankruptcy Rule 2004. (*See* Application at 3). Pursuant to the Order, service was limited to "FedEx or any other method of service permitted under Bankruptcy Rule 9016 or by other means agreed to by the subpoenaed entities or persons." (Order at 2 ¶ 3.) On or around June 20, 2025, Reorganized Holdings issued Subpoenas seeking testimony and documents from the Majority Shareholders and emailed copies of the Subpoenas to undersigned counsel. (Declaration of Frank T.M. Catalina ("Catalina Decl."), Ex. 1.) Reorganized Holdings has submitted no proof of a FedEx (or other personal delivery, never mind service) in connection with making this Motion.

The Subpoenas include fifteen document requests ("Requests"), and direct the production of any responsive documents by bringing them to a deposition set to occur in New York. (Mot., Ex. 2.) The requests are patently overbroad. Request 1 seeks, among other things, "All Documents and Communications regarding the Plan[and] the Confirmation Order." (*Id*.) Covering the same

territory, Requests 5 and 6 collectively seek "All Documents and Communications regarding" efforts to "oppose" or "support" the "Plan[and] the Confirmation Order," plus more. (*Id*.) Requests 8, 11, and 13, respectively, seek "All Documents and Communications regarding any proceedings . . . concerning the Arbitration," *Eletson Holdings, Inc., et. Al. v. Levona Holdings Ltd.*, JAMS Ref. No. 5425000511; "regarding the assets, finances, and/or bank accounts . . . of Holdings, Gas, or any of their . . . affiliates"; and "regarding any payments that are due or that have been made to [the Majority Shareholders' or others'] lawyers." (*Id.*) Nothing in the Subpoenas confines, or even connects, these sweeping categories of documents to the "implementation of the Plan . . . and the Confirmation Order." (Dkt. No. 1698 at 1.)

On July 7, 2025, fourteen days after Reorganized Holdings issued the Subpoenas, the Majority Shareholders responded in a letter that "object[ed] to the Subpoenas in their entireties." (Mot., Ex. 3 at 2.) The letter noted the Subpoenas violate Rule 45's geographic limits by purporting to require the Majority Shareholders, which are (without contest) based in Greece and do not regularly transact business in the United States, to be deposed and produce documents in New York. (*Id.* at 1.) Further, the letter objected that "Rule 45 does not permit the service of subpoenas on foreign nationals residing overseas," and the Requests "exceed the scope" of allowable discovery; were made for the improper purpose of furthering discovery applicable to other proceedings, such as the District Court arbitration award confirmation proceedings; and seek wholesale categories of confidential and/or privileged documents. (*Id.* at 1-2.)

On July 15, 2025, counsel for the Majority Shareholders met and conferred with counsel for Reorganized Holdings about the Majority Shareholders' objections. (Catalina Decl. ¶ 5.) Counsel for Reorganized Holdings did not present counsel for the Majority Shareholders with any authority contradicting the Majority Shareholders' objection that Rule 45 does not allow for

service of subpoenas on foreign nationals residing overseas, and the Majority Shareholders, therefore, did not withdraw their objections. (*Id.*) On July 30, 2025, Reorganized Holdings commenced an adversary proceeding (the "Adversary Proceeding") against, among others, the Majority Shareholders, alleging conversion and breach of contract in connection with their purported non-compliance with the Plan and Confirmation Order. *See Eletson Holdings Inc., et al. v. Vassilis Kertsikoff, et al. (In re Eletson Holdings Inc.)*, Adv. Pro. No. 25-01120-JPM (Bankr. S.D.N.Y.) (Dkt. No. 1.) On August 5, 2025, after commencing the Adversary Proceeding, Reorganized Holding asked the Court for a conference concerning the dispute regarding the Subpoenas. (Dkt. No. 1761.) The next day, the Court entered an order requiring briefing if Reorganized Holdings determined to make a motion. (Dkt. No. 1763.) On August 19, 2025 Reorganized Holdings filed the instant Motion, seeking to compel the Majority Shareholders to produce the documents the Subpoenas request, but not pressing testimony. (Dkt. No. 1792.)

On August 25, 2025, Reorganized Holdings provided a summons and waiver of process form to counsel for the Majority Shareholders in connection with the Adversary Proceeding, which was executed and returned on August 28, 2025. (Catalina Decl. ¶ 6.)

ARGUMENT

I. The Subpoenas Are Invalid and Should Not Be Enforced.

A. Rule 45 Prohibits Service of Subpoenas on Foreign Entities Overseas

The Subpoenas are invalid for a simple and indisputable reason: Rule 45 does not permit subpoenas to be issued to foreign entities located overseas. *See In re Three Arrows Cap., Ltd.*, 647 B.R. 440, 448-49 (Bankr. S.D.N.Y. 2022) (holding that Rule 45 does not permit service of subpoenas on foreign nationals or foreign business entities located overseas); *see also SiteLock, LLC v. GoDaddy.com, LLC*, 338 F.R.D. 146, 148 (D. Or. 2021) ("[A] foreign corporation is not a United States national or resident and therefore cannot be served with a subpoena under Rule 45.'")

(quoting *Viscat, Inc. v. Space Sys./Loral, LLC*, 2014 WL 12577593, at *5 (C.D. Cal. June 30, 2014)). While Rule 45, which is made applicable to the Subpoenas by Bankruptcy Rule 9016, allows for service of a U.S. "national or resident who is in a foreign country" (Fed. R. Civ. P. 45(b)(3)), it contains no mechanism for serving a subpoena on a foreign national or entity overseas. *See generally* Fed. R. Civ. P. 45. As numerous courts, including this one, have held, "Rule 45 is not just 'silent' on foreign service of non-nationals and non-residents, but it provides an explicit limit on such service." *In re Three Arrows Cap., Ltd.*, 647 B.R. at 448; *see also Aristocrat Leisure Ltd. v. Deutsche Bank Tr. Co. Americas*, 262 F.R.D. 293, 305 (S.D.N.Y. 2009) ("[C]ourts faced with similar circumstances have found that foreign nationals living abroad are not subject to subpoena service outside the United States.").

Notably, in contrast to Rule 4 which governs service of process, Rule 45 does not allow for a court to allow "alternative service" of a foreign entity overseas. *See In re Three Arrows Cap., Ltd.*, 647 B.R. at 450 (explaining that the court cannot order alternative service of a subpoena on a foreign entity because Rule 45 does not allow for even standard service). Thus, Reorganized Holdings' argument that the Court's Order, which was entered *ex parte*, trumps the Federal Rules of Civil Procedure and bestows upon Reorganized Holdings worldwide subpoena power over foreign entities overseas is meritless. *See Bank of Nova Scotia v. U.S.*, 487 U.S. 250, 255 (1988) ("[F]ederal courts have no more discretion to disregard the [Federal Rules of Civil Procedure's] mandate[s] than they do to disregard constitutional or statutory provisions."). Indeed, in moving *ex parte* for the Order, Reorganized Holdings failed to apprise the Court of its lack of authority to allow for the service of subpoenas on foreign entities overseas. The fact that this limitation is only now being brought to the Court's attention is an issue of Reorganized Holdings' own making—

whether due to its lack of candor or its own ignorance of the limitations of Rule 45. In either event, the Court must now adhere to Rule 45 and find the issuance of the subpoenas invalid.[2]

B. Reorganized Holdings Cannot Avoid the Limitations of Rule 45 By Emailing the Subpoenas to the Majority Shareholders' Attorneys

Reorganized Holdings attempts to impermissibly expand the scope of Rule 45 by arguing that a foreign entity residing overseas can be served with a subpoena simply by emailing the subpoena to the foreign entity's U.S.-based counsel. This argument is meritless. As an initial matter, while the *ex parte* Order improperly purported to allow Reorganized Holdings to serve foreign entities overseas—because Reorganized Holdings failed to apprise the Court of Rule 45's prohibition against doing so—Reorganized Holdings does not even purport to have followed the terms of the Order. The Court directed Reorganized Holdings to serve the Subpoenas by (1) "FedEx," (2) "any other method of service permitted under Bankruptcy Rule 9016," or (3) other means agreed to by the subpoenaed entities or persons." (Dkt. No. 1698 at 2 ¶ 3.) Reorganized Holdings submitted no proof of service upon the Majority Shareholders with its Motion, nor would FedEx service or any other form of service suffice under Bankruptcy Rule 9016 and Rule 45, as discussed in Section I.A., *supra*.

Rather, Reorganized Holdings appears to rely on its having emailed the Subpoenas to counsel for the Majority Shareholders as a workaround for Rule 45's limitation on serving subpoenas on foreign entities overseas. (*See* Mot. ¶ 16.) But email service on counsel was not permitted by the Order, nor could it have been. "Even a party to a civil case who is represented by counsel must be served personally with a subpoena. Service on a party's lawyer is not

[2] Reorganized Holdings' assertion that the Majority Shareholders failed to properly object to the Subpoenas and responded "with a perfunctory letter" is false. The Majority Shareholders served a written objection, in compliance with Rule 45(d)(1)(B), which raised serious deficiencies with the Subpoena, including the inability to issue a subpoena to a foreign entity located overseas.

sufficient." *U.S. v. Brennerman*, 2017 WL 4513563, at *1 (S.D.N.Y. Sept. 1, 2017) (collecting cases). Reorganized Holdings' reliance on *dicta* distinguishing a wrongly-decided case by the U.S. Bankruptcy Court for the Middle District of Florida cannot override the black-letter rule that a subpoena must be served on the recipient, not its attorneys. (*See* Mot. ¶ 16 (citing *In re Three Arrows Cap., Ltd.*, 647 B.R. 440, 449 (Bankr. S.D.N.Y. 2022), and *In re Procom Am., LLC*, 638 B.R. 634, 644 (Bankr. M.D. Fla. 2022)).) In *In re Three Arrows Capital,* Judge Glenn rejected the *Procom* court's holding that "Rule 4 informs service of foreign nationals under Rule 45," but distinguished *Procom* by noting that service there was made upon the foreign national's attorney in the U.S. 647 B.R. at 449. But the holding rejected by Judge Glenn was integral to *Procom*'s finding that such service was sufficient, as the *Procom* court relied on Rule 4 in allowing "substitute service," an argument rejected in *In re Three Arrows Capital*. *See In re Procom Am.*, 638 B.R. at 641-42. Nor did the *Procom* court address the black-letter law holding that service of a subpoena on a party's attorney is not sufficient. *See, e.g.*, *Brennerman*, 2017 WL 4513563, at *1 (citing cases); Wright & Miller, 9A Fed. Prac. & Proc. Civ. § 2454 (3d ed. 2025) ("[U]nlike service of most litigation papers after the summons and complaint, service [of a subpoena] on a person's lawyer will not suffice."). Simply put, nothing in Rule 45 or in Second Circuit precedent allows for emailing a subpoena to an attorney as a means to overcome Rule 45's prohibition against the issuance of subpoenas to foreign entities located overseas.

Even in cases involving U.S.-based parties, which the Majority Shareholders are not, email service upon a party (and not their attorneys) is not permitted without pre-existing authorization by a court. *See, e.g.*, *Waheed v. Rentoulis*, 2024 WL 4803900, at *1 (S.D.N.Y. Nov. 15, 2024) (rejecting attempts at service by email and the court's website as improper); *Burnett v. Wahlburgers Franchising LLC*, 2018 WL 10466827, at *1 (E.D.N.Y. Oct. 4, 2018) (rejecting

email service because it was not authorized by the court, even though the recipient consented). Here, the Order did not purport to allow for such service, and Reorganized Holdings' reliance upon emailing the Subpoenas to counsel for the Majority Shareholders is fatal to their Motion to compel compliance with the improperly issued Subpoenas.

Finally, and contrary to Reorganized Holdings' assertion, the Majority Shareholders never "agreed to service by email" to their counsel of the Subpoenas through filing of their counsel's notices of appearance and substitution, which make no mention of subpoenas. (Mot. ¶ 16 (citing Dkt. Nos. 515, 1556)). The Motion claims that a notice concerning substitution of counsel states that the Majority Shareholders "request service upon their counsel by, *inter alia*, email." (Mot. ¶ 16 (quoting Dkt No. 1556)). That is not correct. The notice merely provides all contact information for the Majority Shareholders' then-new counsel and then asks, as is customary, that all litigation filings be sent to those counsel. (Dkt No. 1556 at 1-2); *see also* Wright & Miller, 9A Fed. Prac. & Proc. Civ. § 2454 (3d ed. 2025) ("[U]nlike service of most litigation papers after the summons and complaint, service [of a subpoena] on a person's lawyer will not suffice."). Nowhere does the notice request or consent to service specifically by email, or consent to emailed subpoena service directly on counsel for the Majority Shareholders. (Dkt No. 1556 at 1-2.) Indeed, the notice "expressly reserve[s]" all rights and defenses, which include the protections afforded by Rule 45. (*Id.* at 2.) Likewise, the notice of substitution of the Majority Shareholders' prior counsel that the Motion also cites to as support nowhere agrees to email service of subpoenas by on counsel and "expressly . . . reserve[s]" all rights and defenses. (Dkt No. 515 at 2-3.)

Lacking the Majority Shareholders' consent, Reorganized Holdings' email service to counsel was not sufficient under the law, was not authorized by the Order or this Court, and was insufficient to effect service. As a result, the Subpoenas are invalid and cannot be enforced.

C. The Subpoenas Were Sought and Issued Under Rule 45 and Reorganized Holdings' Attempt to Reclassify them as Party Discovery Fails

In the Motion, Reorganized Holdings attempts to pivot away from the fatal defects in its Rule 45 Subpoenas to claim that the Majority Shareholders are actually "parties" and thus Rules 26 and 34 would apply instead. Mot. ¶ 17.[3] As a threshold matter, Reorganized Holdings' never invoked Rules 26 or 34 in its Application. The documents issued by Reorganized Holdings were clearly and undoubtedly issued as "Subpoenas"—the title of Rule 45 being "Subpoena." Rules 26 and 34 do not discuss subpoenas. They discuss discovery from "parties".

In an attempt to make a square peg fit in a round hole, Reorganized Holdings argues that the Majority Shareholders are "parties in interest" and thus "parties" under Rule 26 and 34. (Mot. ¶ 17.) This is wrong. Federal Rules of Civil Procedure Rules 17 to 25, sit under the heading "Parties." There is *no* provision in Rules 17 to 25, anywhere, that treats generic "parties in interest" as "Parties" to an action under the rules. Reorganized Holdings points to none.

To treat entities or persons who have a *potential* interest (financial or otherwise) in a matter as "parties" under the Rules would do violence to the entire set of rules. For example, under Reorganized Holdings' version of the world, where being a "party in interest" is equivalent to being a party to a lawsuit, Rule 17's requirements to join the real party in interest would be surplusage as the real party in interest (per Reorganized Holdings) would already be a "Party." Rule 7.1 would also be left adrift; it would require a "Party" to identify any parent corporation, who, under Reorganized Holdings' view, would *already* be a "Party" because it would have an interest in the litigation. But that's not anywhere in the Rules. Never mind how rules regarding

[3] Reorganized Holdings fails to explain—because there is no explanation—how Rules 26 and 34 could be applied in the context of Rule 2004 discovery outside of a contested matter or an adversary proceeding. Bankruptcy Rule 2004 allows the use of subpoenas pursuant to Bankruptcy Rule 9016, which itself applies *only* Rule 45 to bankruptcy cases. No Bankruptcy Rule applies Rules 26 and 34 to discovery sought via Bankruptcy Rule 2004.

interpleader (Rule 22), class actions (Rule 23), and intervention (Rule 24) would work in a world where simply having *some* interest in a litigation automatically confers "Party" status and subjects one to discovery under Rules 26 and 34. The Majority Shareholders are not "parties" to the bankruptcy under Rules 26 and 34 (nor do Rules 26 and 34 apply outside the context of a contested matter or adversary proceeding), and Reorganized Holdings' invocation of those rules should be rejected.

D. The Subpoenas Violate the Pending Proceeding Rule

By invoking Rules 26 and 34, Reorganized Holdings has hoisted itself by its own petard. Reorganized Holdings filed the Adversary Proceeding against the Majority Shareholders on July 30, 2025—weeks before it moved to compel compliance with the Subpoenas. The subject matter of the Adversary Proceeding is inextricably intertwined with the stated purpose of the discovery Reorganized Holdings seeks through the Subpoenas. (*See* Mot. ¶ 20 (stating Reorganized Holdings "served Subpoenas in furtherance of its investigation into the misconduct perpetrated by Holdings' former management and owners" and that it "seeks this information so that it can effectively stop such misconduct . . . ."); *see also* Adv. Pro. Compl. ¶ 1 (summarizing the action as seeking relief for purported "campaign to resist and obstruct the implementation of the confirmed chapter 11 plan" and for alleged conversion of funds)).

Having commenced the Adversary Proceeding directly relating to the subject matter of the Subpoenas' Requests, the proper channel for discovery is (actual) party discovery in the Adversary Proceeding. "[O]nce an adversary proceeding or contested matter is commenced, discovery should be pursued under the Federal Rules of Civil Procedure and not by Rule 2004." *In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002); *see also In re Cambridge Analytica LLC*, 600 B.R. 750, 752 (Bankr. S.D.N.Y. 2019) (same); *In re Bibhu LLC*, 2019 WL 171550, at *2 (Bankr. S.D.N.Y. 2019) (noting "[c]ourts are wary of attempts to utilize Fed. R. Bankr. P. 2004 to avoid

the restrictions of the Fed. R. Civ. P. in the context of adversary proceedings" (quoting *In re Bennett Funding Grp.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996)).

In short, the Requests read like an initial set of document demands that would be served by Reorganized Holdings in the Adversary Proceeding, seeking, among other things, "[a]ll Documents and Communications regarding the Plan, the Confirmation Order, the Vessels, or the finances and/or bank accounts of Holdings[,] . . . the control, and authority to control, Holdings[,] . . . efforts to oppose the implementation and consummation of the Plan[, and] . . . payments that have been made to lawyers or law firms advocating on behalf of the Former Majority Shareholders[.]" (*See* Mot. ¶ 21.) In addition, many of the Requests clearly relate to other pending proceedings occurring in other forums outside of the Bankruptcy Court. (*See id.* (quoting Requests 7-10 seeking "[a]ll documents" relating to various legal proceedings within or outside the United States).) These Requests clearly relate to other pending proceedings and, therefore, must either be sought through party discovery in the Adversary Proceeding or, in the case of documents relating to other pending proceedings, cannot be sought in this Court through Rule 2004 discovery. *See, e.g.*, *In re Enron Corp.*, 281 B.R. at 842 (finding courts prohibit Rule 2004 discovery "where the party requesting the Rule 2004 examination could benefit their pending litigation position outside of the bankruptcy court"). Accordingly, the Court should not enforce the Subpoenas.

E. The Subpoenas Violate the Geographic Limits in Rule 45(c)

"[T]o be enforceable under federal law, [subpoenas] must comply with Rule 45."[4] *Corp. v. Donziger*, No. 11 CIV. 0691 (LAK), 2020 WL 635556, at *5 (S.D.N.Y. Feb. 11, 2020). Under Rule 45, subpoenas "may direct a person to sit for a deposition or produce documents only if the

[4] Reorganized Holdings disingenuously asserts that Rule 45's geographic restrictions only "protect third parties." (Mot. ¶ 17.) But when this Court authorizes subpoenas pursuant to Rule 45 and Reorganized Holdings issues purported subpoenas pursuant to Rule 45, Rule 45 must be followed.

site of the deposition or the place where the documents must be produced is 'within 100 miles of where the person resides, is employed, or regularly transacts business in person.'" *Id.* (quoting Fed. R. Civ. P. 45(c) (1)(A), (2)(A)). This limit is "unambiguous[] and without exception," and applies even "where the subpoenaed party could submit the requested documents electronically," (*id.* (citation omitted)), or where it could provide "testimony via teleconference," *Broumand v. Joseph*, 522 F. Supp. 3d 8, 23 (S.D.N.Y. 2021) (citation omitted).

Here, the Subpoenas purport to require the Majority Shareholders, which sit and operate in Greece, to attend depositions in New York in violation of this rule. (Dkt. No. 1792 at 21, 36, 51.) Faced with this objection, Reorganized Holdings tacitly admitted the error by (yet again) amending via briefing to press only the document requests. (Mot. at 4 n.4.)

Nevertheless, the document requests violate Rule 45's geographic limit too. The Subpoenas expressly direct the Majority Shareholders to produce documents responsive to the Requests by "bring[ing] the documents with [them] to the examination," set to occur at the office of Reorganized Holdings' counsel at "1177 Avenue of the Americas, New York, New York 10036," thousands of miles from where the Majority Shareholders sit in Greece. (Dkt. No. 1792 at 21, 36, 51). Further, the Requests demand "that [the Majority Shareholders] produce documents responsive to the Requests to **. . .** Herbert Smith Freehills Kramer (US) LLP, 1177 Avenue of the Americas, New York, New York 10036. (*Id.* at 25, 40, 55.)

Reorganized Holdings sole rebuttal misrepresents this fact and the law. Specifically, the Motion asserts that Reorganized Holdings "is requesting" an "[e]lectronic document production," which "occurs in the office of the producing party" and therefore abides by the 100-mile limit. (Mot. ¶ 17 (citing *Mackey v. IDT Energy, Inc.*, No. 19 MISC. 29(PAE), 2019 WL 2004280, at *4 (S.D.N.Y. May 7, 2019), and *Black v. Boomsourcing, LLC*, No. 2:22-MC-696 RJS DBP, 2023 WL

372160, at *2 (D. Utah Jan. 24, 2023).) But there is no way to reasonably construe the Subpoenas' demands for production of documents *to* a physical location, *at* the time of an in-person deposition, and without *any* accompanying electronic address as seeking solely an "[e]lectronic production." The requests themselves do not limit the production (or search) to electronic documents.[5]

The cited cases are inapposite. First, both cases involve subpoenas that actually called specifically for electronic document productions. *Mackey*, 2019 WL 2004280, at *4; *Black*, 2023 WL 372160, at *2. Second, the subpoenas in those cases solely requested documents. *Mackey*, 2019 WL 2004280, at *2; *Black*, 2023 WL 372160, at *1. As such, the courts' decisions "are based on . . . Rule 45(d)(2)(A), which provides that '[a] person commanded to produce documents . . . need not appear in person at the place of production . . . unless also commanded to appear for a deposition, hearing, or trial." *Broumand*, 522 F. Supp. 3d at 24 n.7 (discussing *Mackey* (citation omitted)). That rationale does not apply here because the Subpoenas also purport to require the Majority Shareholders to appear for depositions.

II. If the Court Enforces the Subpoenas Over the Majority Shareholders' Objections, It Should Narrow Their Scope

"A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden and expense on a person subject to the subpoena." Fed. R. Civ. P. 45(d) (1). Reorganized Holdings clearly made no such effort here. The Requests are breathtakingly broad in scope and purport on their face to require the Majority Shareholders to produce "[a]ll Documents and Communications" relating to 14 broad topics with numerous subdivisions, many of which relate to privileged matters such as various legal proceedings, including communications with attorneys about those proceedings. *See Vaigasi v. Solow*

[5] This is yet *another* example of amendment of issued Subpoenas via briefing, an avoidable consequence of Reorganized Holdings' decision to use an inappropriate *ex parte* application.

Management Corp., 2016 WL 616386, at *15 (S.D.N.Y. Feb. 16, 2016) (explaining "[b]lanket requests" seeking "[a]ny and all documents which support, contradict, or in any way relate to" particular topics "are plainly overbroad and impermissible" (quotes omitted)). Compliance with the Subpoenas would, therefore, impose immense burden and expense upon the Majority Shareholders, as they would be required to unearth and compile a massive trove of documents, a significant portion of which are privileged, requiring massive fees and costs.

Because the Majority Shareholders objected to the Subpoenas pursuant to Rule 45(d)(2)(B), any order compelling compliance with them must "protect" the Majority Shareholders "from significant expense resulting from compliance." Fed. R. Civ. P. 45(d)(2)(B)(ii). Accordingly, if the Court were to enforce the invalid Subpoenas, it should significantly limit their scope by, at the very least, requiring Reorganized Holdings to draft any allowable requests more narrowly and to eliminate from their scope any privileged documents.

CONCLUSION

For the foregoing reasons, the Court should deny Reorganized Holdings' motion.

Dated: September 2, 2025
New York, New York

Respectfully submitted,

/s/ Lawrence M. Rolnick

Lawrence M. Rolnick
Richard A. Bodnar
Frank T.M. Catalina
Justin Harris
Rolnick Kramer Sadighi LLP
PENN 1, Suite 3401
One Pennsylvania Plaza
New York, New York 10119
Tel.: 212.597.2800
lrolnick@rksllp.com
rbodnar@rksllp.com
fcatalina@rksllp.com
jharrs@rksllp.com

Counsel for Majority Shareholders