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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
ELETSON HOLDINGS INC., [1]	:	Case No. 23-10322 (JPM)
Debtor.	:	

REPLY IN FURTHER SUPPORT OF 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 (US) LLP, 1177 Avenue of the Americas, New York, New York 10036.

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Eletson Holdings Inc. ("Holdings"), by and through its undersigned counsel, submits this reply (the "Reply") in support of its motion to compel (the "Motion") [Dkt No. 1792][1] the Former Majority Shareholders to comply with the Subpoenas.

I. The Former Majority Shareholders Were Properly Served

1. The Former Majority Shareholders claim they have not been properly served, asserting, first, that Rule 45 prohibits service upon them and, second, that they have not consented to service upon their counsel. *See* Opposition to Motion to Compel [Dkt No. 1804] (the "Objection") at 5-9. They are wrong on both counts.

2. The Former Majority Shareholders' suggestion that Rule 45(b) immunizes them from service fails because it ignores the difference between Rule 45(b)(2) and Rule 45(b)(3). Rule 45(b) provides that a "subpoena may be served *at any place within the United States*." Fed. R. Civ. P. 45(b)(2) (emphasis added). As Judge Glenn explained in *Three Arrows*, service made in the United States upon a non-resident's lawyer "is clearly within the purview of Rule 45(b)(2)." *In re Three Arrows Cap., Ltd.*, 647 B.R. 440, 449 (Bankr. S.D.N.Y. 2022) (citing *In re Procom Am., LLC*, 638 B.R. 634, 642-43 (Bankr. M.D. Fla. 2022)). By serving the Former Majority Shareholders *in the United States*, Holdings properly effectuated service of the Subpoenas.

3. The Former Majority Shareholders' second argument, that they did not agree to service of the Subpoenas on their counsel, is demonstrably false. They filed a *Notice of Appearance and Request for Service* [Dkt No. 515] ("First NoA") and a *Notice of Substitution of Counsel and Demand for Service of Papers* [Dkt No. 1556] ("Second NoA"). The First NoA makes clear that "***all notices*** given or required to be given in connection with [this case], ***and all papers served*** or required to be served in connection therewith" be given and served upon counsel's

[1] Capitalized Terms used but not defined herein have the meanings ascribed to them in the Motion.

business and email address (emphasis added). *See* First NoA at 2. The Second NoA similarly requested service at their new counsel's business and email addresses. Second NoA at 2.

4. Holdings sent the Subpoenas to the Former Majority Shareholders' New York-based counsel by FedEx and email. *See* Aff. of Service [Dkt No. 1813]. As Rule 45 subpoenas need not be personally served,[2] serving the Former Majority Shareholders' counsel was proper.

5. Accordingly, the Former Majority Shareholders cannot seriously claim defective service where (a) Holdings served the Subpoenas *within the United States*, (b) the Former Majority Shareholders *received the Subpoenas*, and (c) Holdings served the Subpoenas in a manner authorized by the Court and requested by the Former Majority Shareholders themselves.

II. The Pending Proceeding Rule Should Not Allow a Delay of Discovery

6. The Former Majority Shareholders argue that they cannot be compelled to comply with the Subpoenas given Holdings' commencement of an adversary proceeding against them (Adv. Proc. No. 25-01120 (JPM) (the "Adversary Proceeding")). Obj. at 11-12. They assert that all discovery must take place under Rules 26 and 34 in the Adversary Proceeding.[3] Obj. at 11. As an initial matter, the Subpoenas cover directly relevant issues and thus satisfy Rules 26 and 34. Moreover, as explained in Holdings' Opposition to the Purported Nominees' motion to quash, there is not complete overlap of issues between the Adversary Proceeding and the Subpoenas. [Dkt No. 1778, ¶28]. Therefore, the primary purpose of the pending proceeding rule—to mitigate discovery abuse—is not implicated here. Perhaps more to the point, however, Holdings is indifferent as to whether it receives the requested discovery here or through the Adversary Proceeding, *so long as*

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[2] *See, e.g., Sheet Metal Workers' Nat'l Pension Fund v. Rhb Installations, Inc.*, No. CV 12-2981 (JS)(ARL), 2016 WL 128153, at *2 (E.D.N.Y. Jan. 12, 2016) ("Rule 45 requires only delivery which reasonably ensures actual receipt by a witness.").

[3] The Former Majority Shareholders also argue that certain requests relate to other proceedings pending in other forums outside of the Bankruptcy Court and such requests must be pursued there. For the reasons set forth in Holdings' Opposition to the Purported Nominees' motion to quash, the pending proceeding rule does not preclude Rule 2004 discovery every time there is an outside related proceeding. [Dkt No. 1778, ¶¶24-25, 28].

it receives it without any delay. What Holdings cannot accept, and what this Court should not condone, is a strategy by which the Former Majority Shareholders seek to further delay discovery in this contested matter only to then block discovery in the Adversary Proceeding. If the Former Majority Shareholders are not willing to promptly collect, review, and produce responsive documents, then their pending proceeding objection reflects merely another attempt to delay and obstruct and should be rejected by this Court. *See In re Braxton*, No. 09-08876-8-RDD, 2014 WL 4178207 (Bankr. E.D.N.C. Aug. 21, 2014) (pending proceeding rule inapplicable where target's delayed compliance resulted in overlap with subsequent litigation).

III. The 100-Mile Rule Is Not Applicable

7. Given the Former Majority Shareholders' status as a party in the Adversary Proceeding, any dispute concerning Rule 45's territorial limitations is largely irrelevant. *See* Fed. R. Civ. P. 26 (providing discovery rules for parties). Nevertheless, the Former Majority Shareholders have argued that they cannot be compelled to appear for depositions or produce documents in New York. *See* Obj. at 12-13. Even assuming Rule 45 is the proper framework (it clearly would not be if discovery moves forward in the pending Adversary Proceeding), the Former Majority Shareholders' 100-mile argument is wrong. On July 15, 2025, Holdings made clear at a meet and confer session that (a) its primary focus was to obtain document productions from the Former Majority Shareholders, (b) that such production can occur electronically, and (c) depositions can be tabled until document discovery has concluded. That position still applies.

8. To be clear: Holdings does not concede that the Subpoenas require document productions in violation of Rule 45(c). *See Mackey v. IDT Energy, Inc.*, No. 19 MISC. 29(PAE), 2019 WL 2004280, at *4 (S.D.N.Y. May 7, 2019) (no Rule 45 violation where documents are uploaded from within 100-miles of party's office); *Linet Americas, Inc. v. Hill-Rom Holdings, Inc.*, No. 21 C 6890, 2025 WL 889579, at *3 (N.D. Ill. Jan. 27, 2025) (noting that "courts nationwide

have confirmed that Rule 45(c)'s 100-mile rule does not apply to . . . data that can be produced electronically"). But to the extent that the requested discovery is governed by Rule 45, and the Court finds that the Subpoenas violate Rule 45(c)'s geographical requirements (they do not), then Holdings submits there is an economical and straightforward solution: modify the Subpoenas. The Court may modify the Subpoenas under Rule 45(d)(3)(A)(ii) and compel production at a location within 100 miles of where the Former Majority Shareholders conduct business in Piraeus, Greece. *See Statement of Financial Affairs* [Dkt No. 217 at 42] (118 Kolokotroni Street, Piraeus, Greece, given as the Former Majority Shareholders' address); *Cf Declaration of Laskarina Karastamati* [S.D.N.Y. 23-cv-7331, Dkt No. 509] (stating she conducts business regularly in Greece). Once the Former Majority Shareholders' document production is completed, the parties can revisit the appropriate location for depositions.

IV. The Former Majority Shareholders Are Not Third Parties

9. Putting aside the Adversary Proceeding, the Former Majority Shareholders' reliance on Rule 45 is misplaced for another, separate reason. They have been actively involved in all aspects of this case, both pre- and post-confirmation. The purpose of Rule 45 is to protect *third parties*, not those who actively participate in all aspects of a case. *See* Wright & Miller, 9A Fed. Prac. & Proc. Civ. § 2452, at n. 9 (3d ed. 2002). That is why Rules 26 and 34 better frame this dispute, and it is why Rule 45 should not govern and, to the extent it does, should not be strictly applied. *See* Fed. R. Civ. P. 1 (the rules "should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding"); Fed. R. Bankr. P. 1001(a).

V. The Former Majority Shareholders Offer No Basis to Narrow the Subpoenas

10. Finally, the Former Majority Shareholders complain, in conclusory fashion, that the Subpoenas are too broad and that Holdings made no effort to avoid imposing an undue burden. Obj. at 14-15. It is the Former Majority Shareholders' burden to actually show that the Subpoenas

are unreasonable. *See Adomni, Inc. v. CT Media, LLC*, No. 23 CIV. 10338 (DEH), 2024 WL 4981510, at *2 (S.D.N.Y. Nov. 19, 2024). They have not done so. Additionally, Holdings tried to work cooperatively with the Former Majority Shareholders. First, Holdings limited the timeframe of the document requests to minimize the burden and expense of searching for and producing responsive documents. Second, Holdings sought a meet and confer to discuss the Subpoenas' scope. But, at that meet and confer, the Former Majority Shareholders reiterated their position that the Subpoenas are improper, and thus would not negotiate. Holdings is willing to meet and confer, again, on a reasonable set of document custodians and search terms.

11. Until the Former Majority Shareholders demonstrate that a collection, search, and production in response to the Subpoenas imposes an undue burden or expense on them, the Court should not preemptively narrow the Subpoenas' scope. *Cf Royal Park Invs. SA/NV v. Deutsche Bank Nat'l Tr. Co.*, No. 14-CV-04394 (AJN)(BCM), 2018 WL 11585535 (S.D.N.Y. Feb. 2, 2018) (noting that the Court ordered the producing party to run a hit report to identify and crystalize concerns of breadth).

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