Docket #2100 Date Filed: 08/25/2026

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

REED SMITH LLP'S OPPOSITION TO MOTION FOR AN ORDER AUTHORIZING TURNOVER UNDER § 542(e) OF THE BANKRUPTCY CODE AND CONFIRMING THE TRANSFER OF ATTORNEY-CLIENT PRIVILEGE

Reed Smith LLP ("Reed Smith"), by and through its undersigned counsel, respectfully submits this opposition to Eletson Holdings Inc.'s ("Reorganized Holdings") *Motion for An Order Authorizing Turnover Under § 542(e) of The Bankruptcy Code and Confirming Transfer of Attorney-Client Privilege* (Dkt. No. 2094 or "Motion").

PRELIMINARY STATEMENT

1. Reorganized Holdings' Motion seeks an order compelling Reed Smith, and other former professionals of Holdings (collectively, the "Former Professionals")[2] to turn over "extensive records and information" "developed and maintained in the course of, or in connection with, the representation of the Debtors" (the "Client Files"). Motion ¶¶ 4, 5, 8, 9.

2. To be clear: this is not the first time Reorganized Holdings has sought these Client Files. Reorganized Holdings previously sought nearly identical relief concerning Reed Smith's Client Files in proceedings before the District Court. Judge Liman granted the requested turnover

[1] The Debtors in these cases were: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC.

[2] "Former Professionals" as defined in the Motion refers to Reed Smith, Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"), Riveron RTS LLC ("Riveron"), Investments and Finance Ltd. ("Investments"), and Harold Furchtgott-Roth ("Furchtgott-Roth"). Motion ¶ 7. As defined herein, "Reed Smith-Related Former Professionals" shall refer to Riveron, Investments, and Furchtgott-Roth.

2310322260825000000000003

order, but the Second Circuit then stayed that order pending appeal. *See Eletson Holdings Inc., et al. v. Levona Holdings Ltd.*, Case No. 25-445 (2d Cir.) (the "Turnover Order Appeal"), Dkt. No. 66.1 (the "Stay Order"). That appeal remains pending. The Second Circuit did deny a complete stay of proceedings in this Court and the district court, but in doing so expressly noted that it "trust[ed] that both courts will tailor their proceedings to protect the privileged property at issue." *Id.* at 2–3. Reorganized Holdings now invites this Court to ignore the Second Circuit's direction.

3. Reorganized Holdings in fact concedes that "a subset of the Eletson Client File is the subject of a currently pending appeal." Motion ¶ 4 n.2. Yet it asks this Court to authorize turnover of all Client Files. *See id.* at 13–15. Its only proposed accommodation is that it is "willing to hold enforcement . . . in abeyance" as to documents relating to the Vacatur Proceeding. *Id.* ¶ 4 n.2. But Reorganized Holdings offers no workable mechanism whatsoever for identifying that subset to be withheld from those to be produced, given the extensive overlap between Reed Smith's various Eletson-related workstreams. And more generally, the same privilege issues that apply to the Vacatur Proceeding and caused the Second Circuit to issue its stay ruling inherently apply to all of Reed Smith's and the Reed Smith-Related Former Professionals' Client Files at issue here; it is frankly disingenuous for Reorganized Holdings to suggest otherwise.

4. The Court should therefore deny the Motion. First, this Court is bound by the Second Circuit's stay order which governs most if not all of the documents at issue here. Second, the Second Circuit will necessarily be addressing and resolving issues relating to the entirety of the Eletson Client File, and a contrary order risks inconsistent rulings on crucial issues. Third, denial costs Reorganized Holdings nothing but spares Reed Smith and the Former Professionals who worked with Reed Smith (collectively, the "Reed Smith-Related Former Professionals") an extremely burdensome, predictably contentious, and potentially duplicative review process, and

would uphold the Second Circuit's expectation that this Court "protect the privileged property at issue." Stay Order at 2–3. Fourth, Reorganized Holdings' two prior attempts at obtaining these materials have been stayed, once by the Second Circuit and once by this Court in connection with an adversary proceeding filed by Reorganized Holdings. Yet Reorganized Holdings knowingly seeks documents already at issue before the Second Circuit, forcing Reed Smith to relitigate—with more litigation to surely follow—the same disputed turnover issues. This Court should put an end to Reorganized Holdings' efforts to circumvent and undermine the Second Circuit's ability to adjudicate the issues. Once the Turnover Order Appeal is resolved and the stay lifted, if Reorganized Holdings decides to renew its motion (despite the other issues identified herein), it can seek to do so.

5. Alternatively, the Court should deny the Motion because Section 542(e) does not authorize Reorganized Holdings' requested relief. Reorganized Holdings' request sweeps far beyond what Section 542(e) allows: Reorganized Holdings' request encompasses materials of non-debtor clients and Reed Smith's own internal and defense files. Once those improper categories are excluded, much of what remains is protected by privilege or cannot be disclosed consistent with Reed Smith's obligations to other clients.

RELEVANT PROCEDURAL BACKGROUND

I. The Role of Reed Smith and the Former Professionals in the Bankruptcy.

6. On January 5, 2024, this Court issued an order authorizing the Debtors to retain Reed Smith as Debtors' counsel. Dkt. No. 350 at 2.

7. In its role as Debtors' counsel, Reed Smith engaged certain Former Professionals to aid Debtors' counsel in the restructuring process. Between August 7 and August 13, 2024, Reed Smith applied for orders authorizing the Debtors to retain three professionals: (1) Investments as a financial advisor to help negotiate with creditors and "coordinat[e] with Holdings' counsel . . .

with respect to testimony," among other services, Dkt. No. 924 ¶ 20; (2) Riveron as a domestic financial advisor to help analyze competing plan proposals and provide waterfall analyses, among other bankruptcy-related tasks, Dkt. No. 936 ¶ 12; and (3) Furchtgott-Roth as an economic expert who was retained to provide "economic consulting services, in connection with Reed Smith LLP's representation of Eletson Holdings in the Bankruptcy," Dkt. No. 937-3.

8. This Court granted the applications on August 22, 2024. Dkt. Nos. 1008 (Investments), 1010 (Riveron), 1011 (Furchtgott-Roth). The Reed Smith-Related Former Professionals worked closely with Reed Smith as Debtors' counsel and rendered services necessary for the Debtors' restructuring. *See* Dkt. No. 1324 (Investments helped Reed Smith advise on DIP financing, disclosure statements, and settlement term sheets); Dkt. No. 1320 at 13, 15 (Riveron helped Reed Smith advise on Chapter 11 strategy, recovery prospects under competing plans, and administrative claim motions); Dkt. No. 1193 (Reed Smith and Riveron "strategize[d]" on "responding to . . . reports" and collaborated on "expert reports"); Dkt. No. 1323 (Furchtgott-Roth filed three expert reports while working closely with Reed Smith and Riveron).

9. On November 4, 2024, the Court entered an order confirming a plan of reorganization. Dkt. No. 1223.

II. Reorganized Holdings' First Turnover Motion and the Second Circuit's Stay.

10. On January 7, 2025, Reorganized Holdings filed a motion in the Southern District of New York requesting that Reed Smith turn over the "Eletson Client File." *Eletson Holdings, Inc. et al. v. Levona Holdings Ltd.*, Case No. 23-cv-07331-LJL (S.D.N.Y.) ("Vacatur Dkt."), Dkt. No. 243. Specifically, this motion sought "the immediate turnover of all the materials provided by Eletson or its agents to Reed Smith in connection with this action and an order permitting inspection and copying of all materials created by Reed Smith during its representation of Eletson."

Id. at 1.

11. On February 14, 2025, the Southern District of New York granted that motion and ordered Reed Smith to "turn over" its "Eletson client file." Vacatur Dkt. No. 269 (the "Turnover Order"). The Turnover Order covered "the entire file maintained by Reed Smith in any matter wherein it represented Eletson Corp. or Eletson Holdings in relation to the arbitration award, the enforcement thereof or the monetization of it and the disputes underlying the award." Feb. 14 Hr'g Tr. at 107:1–5, Vacatur Dkt. No. 270. The Court also noted that "[t]o be clear, however, [this order] is not limited to the file in connection with this action. It applies to the files in connection with the arbitration proceeding and award, this enforcement action to confirm or, alternatively, vacate the award, and efforts to monetize it." *Id.* at 107:15–19.

12. Reed Smith appealed and moved to stay the Turnover Order pending appeal. *See* Turnover Order Appeal, Dkt. Nos. 1.1, 20.1. Reed Smith's appeal argues in part that "the ordered turnover is premised on final consummation of the Bankruptcy Plan that has not occurred." Turnover Order Appeal, Dkt. No. 20.1 at 13.

13. On June 25, 2025, the Second Circuit granted Reed Smith's motion to stay the Turnover Order pending appeal. *See* Stay Order. In doing so, the Circuit necessarily found that Reed Smith had established a likelihood of success on the merits. *See id.* (citing *Nken v. Holder*, 556 U.S. 418, 434 (2009)). The Circuit further directed this Court and the district court to "tailor their proceedings to protect the privileged property at issue." *Id.*

III. The Plan Confirmation Appeal and the Second Circuit's Denial of Motion To Dismiss.

14. In parallel, Reed Smith, on behalf of Holdings, appealed the District Court's order granting a stipulation to dismiss the appeal of this Court's decision confirming the plan of reorganization. *See In re Eletson Holdings, Inc.*, Case No. 25-0176 (2d Cir.) (the "Plan Confirmation Appeal").

15. Reorganized Holdings moved to dismiss that appeal or remand to the District Court, arguing that the Plan "displaced [Holdings'] former management and shareholders," "terminated Reed Smith as [Holdings'] counsel," and "eliminated the authority of former management, former shareholders or former counsel to direct or control [Holdings] in any capacity." Plan Confirmation Appeal, Dkt. No. 32.1 at 2. After filing that motion, Reorganized Holdings told this Court that it was "currently seeking to displace Reed Smith in the [Plan Confirmation Appeal] pending in the Second Circuit." Dkt. No. 1651 at 28 n.18.

16. In the same order granting Reed Smith's motion to stay the Turnover Order, the Circuit also denied Reorganized Holdings' and Eletson Corp.'s motion to dismiss the Plan Confirmation Appeal, deferring the question of "who controls Eletson Holdings, Inc., and what effect that control has on the appeal" to the merits panel. *See* Stay Order; Plan Confirmation Appeal, Dkt. No. 50.1 (same).

17. The Plan Confirmation Appeal remains pending. One of the issues still open in the appeal before the Second Circuit is whether "the Plan validly [took] effect even though the conditions precedent to effectiveness were neither satisfied nor validly waived." Plan Confirmation Appeal, Dkt. No. 85.1 at 8. And even if the Plan took effect, the Plan Confirmation Appeal argues that "unreorganized Holdings retain[s] sufficient existence in light of foreign law and standing to pursue its appeal of Plan confirmation." *Id.*

IV. Reorganized Holdings' Adversary Proceeding and this Court's Stay.

18. On July 30, 2025, Reorganized Holdings filed an adversary proceeding in this Court, naming Reed Smith as one of the defendants. *Eletson Holdings Inc., et al. v. Kertsikoff, et al.*, Adv. Pro. 25-01120-JPM (Bankr. S.D.N.Y.) (the "Holdings Adversary Proceeding"), Dkt. No. 1. Reorganized Holdings filed an amended complaint on December 23, 2025, *id.*, Dkt. No. 59, alleging federal statutory and state-law claims including a conversion claim premised in part on

the "client files from counsel," *id.* ¶ 450.

19. On February 4, 2026, Reed Smith moved to compel arbitration in the Holdings Adversary Proceeding or to dismiss the complaint, *id.*, Dkt. No. 68, and on June 15, 2026, moved for a stay of discovery pending resolution of the motion to compel arbitration or any appeal thereof, *id.*, Dkt. No. 98.

20. On July 30, 2026, this Court heard argument on the requested stay. Asked whether, if a stay issued, Reorganized Holdings could nonetheless "seek third-party discovery to get around that," Reorganized Holdings' counsel answered: "Yes, Your Honor. Absolutely." Jul. 30 Hr'g Tr. at 17:9–14. The Court observed that a stay would then be "essentially meaningless." *Id.* at 17:15–16.

21. On August 3, 2026, the Court denied Reed Smith's motion to compel arbitration and its motion to dismiss, *id.*, Dkt. No. 130, but granted Reed Smith's motion to stay pending interlocutory appeal of the motion to compel arbitration, *id.*, Dkt. No. 131.

ARGUMENT

I. The Court Should Deny the Motion Based on the Second Circuit's Stay Order, the Turnover Order Appeal, the Plan Confirmation Appeal, and this Court's Stay of the Holdings Adversary Proceeding Against Reed Smith.

22. Reorganized Holdings concedes that "a subset of the Eletson Client File is the subject of a currently pending appeal." Motion ¶ 4 n.2. Yet it asks this Court to enter a proposed order containing no carveout for this subset of documents, *see* Motion at 13–15, offering only that Reorganized Holdings is "willing to hold enforcement of this order with regard to" these documents "in abeyance," *see id.* ¶ 4 n.2.

23. The Court should deny this Motion as it is an inappropriate end-run around the Second Circuit's Stay Order, the pending Turnover Order Appeal, the pending Plan Confirmation Appeal, and the stay of the Holdings Adversary Proceeding against Reed Smith. Four specific

reasons support this common-sense conclusion.

24. *First*, the Second Circuit's Stay Order binds the Court here as it relates to the very documents subject to the Turnover Order Appeal. To state the obvious, "[i]t is axiomatic that . . . decisions of the [Second Circuit] bind" federal courts in this jurisdiction, *Williams v. United States*, 2015 WL 4563470, at *3–4 (S.D.N.Y. July 20, 2015), and a bankruptcy court is "bound as a lower court in the Second Circuit to abide," *In re Motors Liquidation Co.*, 447 B.R. 150, 169 (Bankr. S.D.N.Y. 2011). Thus, this Court could not grant Reorganized Holdings' request, even if it wanted to, as it relates to the documents subject to the Stay Order. And while Reorganized Holdings asserts that only a "subset" of the Client File is subject to the Turnover Order Appeal, Motion ¶ 4 n.2, Reorganized Holdings articulates no meaningful distinction, given that Reorganized Holdings' Motion broadly requests all information "developed and maintained in the course of, or in connection with, the representation of the Debtors," *id.* ¶ 4, and the Turnover Order contemplated "the entire file maintained by Reed Smith in any matter wherein it represented Eletson Corp. or Eletson Holdings in relation to the arbitration award, the enforcement thereof or the monetization of it and the disputes underlying the award," Feb. 14 Hr'g Tr. at 107:1–5, Vacatur Dkt. 270.

25. *Second*, even if there is not complete overlap in the documents at issue, the Second Circuit's pending decisions in the Turnover Order Appeal and Plan Confirmation Appeal implicate central issues relating to this entire Motion, not just a subset of documents. Section 542(e) provides for turnover of "information . . . relating to the debtor's property or financial affairs" "**[s]ubject to any applicable privilege**." 11 U.S.C. § 542(e) (emphasis added).

26. The privilege and ownership issues governing the requested files remain before the Second Circuit. In denying Reorganized Holdings' and Eletson Corp.'s motion to dismiss the Plan

Confirmation Appeal, the Second Circuit explicitly reserved for itself the questions of "who controls Eletson Holdings, Inc., and what effect that control has on the appeal." Stay Order at 2. And in granting the stay of the Turnover Order, the Circuit necessarily found that Reed Smith had established a likelihood of success on the merits. *See id.* (citing *Nken v. Holder*, 556 U.S. 418, 434 (2009)). Those rulings, individually and together, necessarily recognize Reed Smith's right – indeed its duty – to protect the privileges at issue pending the ongoing Second Circuit appeals.[3]

27. Deference to the Circuit in this instance is also required here, as "compel[ling]" disclosure of documents "poses the threat of inconsistent rulings about whether or not the [documents] [are] protected from disclosure." *PDV USA, Inc. v. Interamerican Consulting Inc.*, 2024 WL 2874558, at *2 (S.D.N.Y. June 6, 2024). Should the Court grant Reorganized Holdings its requested relief and the Second Circuit later finds that Reorganized Holdings does not have a right to those materials, it would be "too late to put the genie back in the bottle." *Id.* That, of course, is why the Second Circuit expected this Court to "tailor [its] proceedings to protect the privileged property at issue." Stay Order at 2–3.

28. Courts in this Circuit routinely defer ruling on issues subject to a pending appeal, including where the Second Circuit has "temporarily stayed enforcement" of a lower court's order that touches on the underlying issue. *Thai Lao Lignite (Thailand) Co., Ltd. v. Gov't of Lao People's Democratic Republic*, 2013 WL 3970823, at *1 (S.D.N.Y. Aug. 2, 2013); *see United States v. Romeo*, 136 F. 4th 372, 376 n.1 (2d Cir. 2025) (noting that the district court "deferred ruling" on a forfeiture order pending Second Circuit appeal); *In re Lehman Bros. Sec. and ERISA*

[3] Holdings may point to the Second Circuit's October 31, 2025 order denying Reed Smith's motions for an injunction and a stay relating to documents in Holdings' Microsoft account. *See* Turnover Order Appeal, Dkt. No. 105. That order does not bear on this Motion. It concerned a different producing party (Holdings itself, not Reed Smith) and different documents (materials in Holdings' computer systems, not Reed Smith's client file). *See id.* The order neither construed nor disturbed the Stay Order, and it resolved no question of privilege, work product, or ownership of the client file — questions the motion panel expressly left for the merits panel. *See* Stay Order (deferring the question of who controls Holdings).

Litig., 2012 WL 6584524, at *1 (S.D.N.Y. Dec. 18, 2012) (deferring ruling on question that was "*sub judice* in the Court of Appeals").

29. *Third*, denial of the Motion would avoid an extraordinarily burdensome, and unnecessary, review process that would consume significant resources of the Court, Reed Smith, the Reed Smith-Related Former Professionals, and Reorganized Holdings. Even presuming (as Reorganized Holdings does) that only a "subset" of the Client File is subject to the Turnover Order Appeal, Motion ¶ 4 n.2, any turnover before the Second Circuit rules would apparently first require Reed Smith and the Reed Smith-Related Former Professionals to segregate, document by document, the materials falling outside the stayed Turnover Order — a line-drawing exercise that depends on the very scope question the Second Circuit has yet to resolve. The parties would then predictably litigate that line, including through disputes over the adequacy of any log Reed Smith and the Reed Smith-Related Former Professionals prepared. And if the Second Circuit affirms in relevant part, Reed Smith and the Reed Smith-Related Former Professionals would be required to conduct the review a second time, against whatever scope the Circuit ultimately defines. Denial avoids that duplication entirely; Reorganized Holdings identifies no prejudice from waiting, having already waited 21 months following the effective date and represented that it is prepared to defer enforcement as to these documents in any event. *Id.*

30. *Lastly*, this Court should not reward Reorganized Holdings' forum shopping and repeated efforts to relitigate the same issues. Reorganized Holdings has made two attempts to get these materials: once before Judge Liman, and once before this Court in connection with the Holdings Adversary Proceeding. Both of those attempts are stayed. And as this Court recognized in connection with the Holdings Adversary Proceeding, by seeking access to these documents through another channel, Reorganized Holdings is attempting to make these stays "essentially

meaningless." Holdings Adversary Proceeding, Jul. 30 Hr'g Tr. at 17:9–14.

31. Reorganized Holdings should not now "be able to evade the force and effect of" these "orders by [its] choice of forum." *Levy v. Welsh*, 2013 WL 1149152, at *5 (E.D.N.Y. Mar. 19, 2013) (rejecting attempt to "engag[e] in forum shopping in order to side-step court rulings or actions" the party "did not like"). Given the stays in the Vacatur Proceeding and Holdings Adversary Proceeding, Reorganized Holdings is clearly, and impermissibly, attempting to use this action "to conduct discovery in related but separate actions." *Makhoul v. Watt*, 2014 WL 977682, at *11 (E.D.N.Y. Mar. 12, 2014). Reorganized Holdings cannot now use this motion "to recover what is essentially the same relief for harm arising out of the same or related facts, even if the suits depend on alternative theories to establish entitlement to relief." *Vega v. Dep't of Educ.*, 2020 WL 6727803, at *4 (S.D.N.Y. Nov. 16, 2020) (citation omitted); *see Erickson v. Corinthian Colleges, Inc.*, 2013 WL 5493162, at *3 (S.D.N.Y. Oct. 1, 2013) ("[E]fforts to select one district to avoid or obtain specific rulings of another should be disfavored and discouraged." (citation and quotation marks omitted)); *cf. Koch v. Greenberg*, 2009 WL 2143634, at *5 n.3 (S.D.N.Y. July 14, 2009) (quashing discovery concerning non-party where plaintiff's separate action against that non-party was stayed, because pending action "should not provide a vehicle for Plaintiff to evade that discovery stay").

II. Alternatively, the Court Should Deny Reorganized Holdings' Motion Because It Is Not Entitled To Relief Pursuant to Section 542.

32. Even assuming Reorganized Holdings succeeded to the Debtors' rights and controls their privilege—the questions now before the Second Circuit—Reorganized Holdings is not entitled to the relief it seeks because, as explained more fully below: (1) its request sweeps in whole categories of materials § 542(e) does not reach, and (2) the statute's privilege limitation — together with Reed Smith's nondisclosure duties to third parties — bars turnover in any event.

33. *First*, Reorganized Holdings' expansive requested relief extends far beyond Section 542(e). Section 542(e) reaches only recorded information "relating to the debtor's property or financial affairs." 11 U.S.C. § 542(e). Yet Reorganized Holdings seeks everything "developed and maintained in the course of, or in connection with, the representation of Debtors." Motion at 13.

34. Whole categories fall outside of Section 542(e) yet fall within Reorganized Holdings' requested relief: materials of non-debtor clients, including Eletson Corporation; Reed Smith's own internal conflicts, ethics, and firm-management records; and Reed Smith's defense file in the very litigation Reorganized Holdings brought against Reed Smith. None of these are the Debtors' documents.

35. Reorganized Holdings proposes no method for excluding any of these categories, and its proposed order contains no limitation at all. Motion at 13–15. Sorting them would require document-by-document adjudication against contested privilege claims—the work of an adversary proceeding, not a comfort order, and particularly inappropriate while the scope of the Client File is on appeal as discussed above.

36. *Second*, Section 542(e) reaches recorded information "[s]ubject to any applicable privilege." 11 U.S.C. § 542(e). Despite the Circuit's recognition that the former debtor retains a right to be heard on appeal, and its direction that this Court tailor its proceedings to protect the privileged property at issue, *see* Stay Order, Reorganized Holdings' proposed order does not do so. Reorganized Holdings' right, if any, to the documents it requests must give way to the duty of nondisclosure that Reed Smith owes to others. An attorney is under no duty to disclose its client files if doing so "might violate a duty of nondisclosure owed to a third party, or otherwise imposed by law." *Sage Realty Corp. v. Proskauer Rose Goetz & Mendelsohn L.L.P.*, 91 N.Y.2d 30, 37

(1997). Ordering Reed Smith, Riveron, Investments, and Furchtgott-Roth to turn over their client files to Reorganized Holdings would impermissibly provide Eletson Holdings' opponent in the bankruptcy and Vacatur proceedings access to Eletson Holdings' privileged case files. The client's transfer of control to an opposing party does not give that party unfettered access to privileged communications regarding matters on which the parties are now opposed. *See Tekni-Plex, Inc. v. Meyner & Landis*, 674 N.E.2d 663, 671 (1996). To hold otherwise would "thwart, rather than promote, the purpose of the underlying privilege," and "significantly chill attorney-client communications during the transaction." *Id.* at 671–72. These are the very issues that are presented to the Second Circuit on the merits appeal, yet Reorganized Holdings seeks to have this Court resolve the issues and potentially undermine any relief that the Circuit orders.

CONCLUSION

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

Dated: August 25, 2026

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: */s/ Marshall R. King*
Marshall R. King
mking@gibsondunn.com
Nancy E. Hart
nhart@gibsondunn.com
C. Lee Wilson
clwilson@gibsondunn.com

200 Park Avenue, 48th Floor
New York, New York 10166
Tel: 212.351.4000

Attorneys for Reed Smith LLP