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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**ELETSON HOLDINGS INC.'S REPLY TO REED SMITH LLP'S OBJECTION TO ELETSON HOLDINGS INC.'S MOTION FOR AN ORDER AUTHORIZING TURNOVER UNDER § 542(e) OF THE BANKRUPTCY CODE AND CONFIRMING TRANSFER OF ATTORNEY-CLIENT PRIVILEGE**

Holdings respectfully submits this reply (this "Reply") in further support of its motion for an order authorizing turnover under section 542(e) of the Bankruptcy Code and Confirming Transfer of the Attorney-Client Privilege [Docket No. 2094] (the "Motion")[2].

## PRELIMINARY STATEMENT

1. Holdings filed the Motion to obtain an order authorizing—not directing—the Former Professionals to turn over the Eletson Client Files and confirming that the attorney-client

[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.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

privilege held by Holdings pre-confirmation with respect to the Former Professionals remains with Holdings and is now controlled by its new management following the Effective Date. Indeed, the Motion was filed, in part, to provide the non-Reed Smith Former Professionals with additional assurance before handing over materials in their possession in the face of the old owners and Reed Smith's insistent attempts to sow doubt among third parties on the effect of the Plan.

2. Reed Smith's opposition [Docket No. 2100] (the "Reed Smith Objection") fundamentally distorts the purpose of the Motion and the relief sought. At bottom, the Motion seeks fundamental and routine relief: the turnover of documents Holdings owns and needs to run its business and ensure it is aware of all its obligations, assets, and potential causes of action. It also seeks to ensure that an appropriate order is in place if the Second Circuit's ruling moots Judge Liman's turnover decision. The materials in question are property of Holdings and should have been handed over long ago consistent with the Plan and Confirmation Order without need for a separate motion.[3]

3. Each point in the Reed Smith Objection is addressed by the record, controlling authority, and the accommodations Holdings had already proposed in the Proposed Order. The Reed Smith Objection focuses almost exclusively on the subset of the Eletson Client File that is the subject of a currently pending appeal before the Second Circuit (Case No. 25-445), namely, materials relating to the arbitration award, the enforcement thereof, or the monetization of it and the disputes underlying the award (the "Vacatur Documents"). But Holdings has already made clear that enforcement of any order with respect to the Vacatur Documents will be held in abeyance pending outcome of the Second Circuit's decision. To the extent there is any doubt, the revised

[3] Although the Motion seeks only authorization, Holdings believes that failure to turnover Holdings' property would violate the Confirmation Order.

proposed order (the "Revised Proposed Order") filed contemporaneously herewith makes it overtly explicit, defining the Vacatur Documents by the same subject-matter scope so that the carve-out is coextensive with the Stay Order. That accommodation addresses the core concern underlying Reed Smith's stay-related objections, and the remaining objections fail to set forth a basis to deny the Motion.

## ARGUMENT

4. The Reed Smith Objection should be overruled. Section 542(e) authorizes this Court to order an entity holding recorded information relating to a debtor's property or financial affairs to turn over that information, "[s]ubject to any applicable privilege." 11 U.S.C. § 542(e). Holdings seeks only the records it owns and needs to operate its business, protect assets, and preserve potential causes of action, while preserving the status quo as to the Vacatur Documents subject to the Stay Order. The privilege, like other assets, passed to the new owners of Holdings upon the Effective Date. Accordingly, the Motion acknowledges the Second Circuit's jurisdiction and rests on this Court's final unstayed orders.

### I. The Motion is Consistent with the Second Circuit's Stay Order, and Holdings' Abeyance Commitment Acknowledges the Second Circuit's Jurisdiction

5. Reed Smith argues the Motion constitutes an improper attempt to circumvent the Second Circuit's Stay Order (as defined below). That is a misreading of the Motion because the Motion specifically carves the Vacatur Documents from the immediate relief.

6. The Second Circuit's stay applies to a specific order—Judge Liman's February 14, 2025 Turnover Order—entered in the Vacatur Proceeding. *Eletson Holdings Inc., et al. v. Levona Holdings Ltd.*, Case No. 25-445 (2d Cir.) (the "Turnover Order Appeal") (Docket No. 66.1) (the "Stay Order"). That 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 Arbitration*." *Eletson Holdings Inc. and Eletson Corp. v. Levona Holdings Ltd.*, Case No. 23-cv-7331 (LJL) (Docket No. 295) (emphasis added). By its terms, the Stay Order does not extend to this Court's independent authority under section 542(e) to order turnover of files *unrelated to the arbitration award, its enforcement, or its monetization.* The Stay Order does not encompass documents generated in connection with, among other things, Holdings' day-to-day business operations, contractual obligations, the restructuring process, claims that have been asserted against or by Holdings and its subsidiaries, postpetition financing matters, and Plan negotiations, among other categories of documents. Such documents are clearly covered by the scope of section 542(e) and are property of Holdings.

7. Holdings is not seeking immediate turnover of the Vacatur Documents, and Holdings does not disagree that the Second Circuit stay controls with regard to those documents. Holdings would only seek to enforce the Revised Proposed Order once the Second Circuit rules.

8. The Second Circuit's October 31, 2025 order (*Eletson Holdings Inc., et al. v. Levona Holdings Ltd.*, Case No. 25-445 (2d Cir.) (Docket No. 106) (the "October 31 Order")) denied Reed Smith's and the former shareholders' previous attempt to read broader relief into the Stay Order when it denied their motions for injunctive and stay relief relating to the Microsoft Order for two independent reasons: they had not first sought that relief in the District Court, and they failed to make the showing required for an injunction or stay (despite raising many of the same points they do in the Objection). The ruling confirms that the Second Circuit has not extended its protective perimeter beyond the Turnover Order Appeal. This Court therefore retains its section 542(e) authority over materials outside that perimeter. That Reed Smith seeks to distinguish the October 31 Order as involving a different producing party and different documents

(Reed Smith Obj. ¶ 28 n.3) only underscores the point: the Second Circuit has confined its protective perimeter to the Turnover Order, and Reed Smith identifies no order extending it.

9. The Second Circuit's direction that this Court and the District Court "tailor their proceedings to protect the privileged property at issue" (Stay Order at 2-3) contemplated that proceedings would continue and be tailored to protect privilege. The Revised Proposed Order allows for the tailored proceeding the Second Circuit envisioned.

## II. The Confirmed Plan and Confirmation Order are Final Unstayed Judgments of this Court

10. Reed Smith's disingenuous attempts to once again relitigate confirmation and the Effective Date should be ignored. Reed Smith continually cites to the Second Circuit's statement in the Stay Order that its ruling was "without prejudice to parties raising their arguments regarding who controls [Holdings] and what effect that control has on this appeal before the merits panel,"[4] while ignoring the Second Circuit's later ruling in denying their stay motion with regard to the Microsoft Order that referenced "the current owners of Eletson Holdings, Inc. (under the terms of the bankruptcy reorganization plan)." *See* Oct. 31 Order. To be clear, neither of those orders is dispositive or controlling on this issue. What matters is that unless and until the Second Circuit overturns a ruling of this Court, this Court's orders are fully enforceable. Nor does the Second Circuit's stay of the Turnover Order hand Reed Smith a merits ruling. A stay under *Nken v. Holder*, 556 U.S. 418 (2009), reflects a provisional, four-factor assessment on a limited record, not an adjudication of ownership or privilege, and it reaches only the materials the Turnover Order covered.

[4] Holdings interpreted that language to clarify only that the Second Circuit's denial of the motion to dismiss did not decide who controlled Holdings, and to caution the parties against reading too much into that ruling. Reed Smith, however, read into it the right to call itself "the Eletson Holdings Inc. entity that the Second Circuit recognizes as being represented by Reed Smith." *See, e.g.,* Docket No. 1754.

11. Likewise, Reed Smith's suggestion that the identity of Holdings' current owners remains an open legal question is nothing more than a recitation of their own advocacy before the Second Circuit. This Court and the District Court have repeatedly held that the Plan went effective on November 19, 2024, resulting in a change of ownership. *See, e.g.,* Docket No. 1402, Ex. A (Jan. 24, 2025 Hr'g Tr.) at 23:17-24, 26:5-11; Docket No. 1448, Ex. B (Feb. 14, 2025 District Ct. Hr'g Tr.) at 89:6-90:8, 96:17-20, 97:6-13; Docket No. 1468, Ex. A (Feb. 20, 2025 Hr'g Tr.) at 97:14-98:13; Docket No. 1536, Ex. A (Mar. 12, 2025 Hr'g Tr.) at 57:1-14. Absent a stay of that ruling, which was never sought nor obtained, advocacy positions taken by the losing party on appeal are irrelevant. *Maness v. Meyers*, 419 U.S. 449, 458-60 (1975) ("If a person to whom a court directs an order believes that order is incorrect the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal.").

12. For purposes of the Motion, all that is relevant is that no stay of the Confirmation Order has been entered, and the Plan's provisions—including the vesting of all estate property in Holdings on the Effective Date and this Court's authority under section 542(e)—remain in full force and effect.

**III. The Motion is Not Premature or Duplicative**

13. Reed Smith argues that the Court should defer ruling until the Second Circuit resolves the Turnover Order Appeal, but deferral is unwarranted here. Parties entitled to turnover can seek an order authorizing turnover, subject to appropriate safeguards, rather than waiting indefinitely for appellate resolution of related proceedings.

14. Reed Smith's suggestion that the Motion is impermissible forum shopping (Reed Smith Obj. ¶¶ 30-31) is meritless. A turnover of Holdings' own client file under section 542(e) is not discovery, and it is not the "same relief" as the claims in the Holdings adversary proceeding

(*In re Eletson Holdings Inc.*, Case No. 23-10322 (JPM), Adv. Pro. No. 25-01120-jpm (Bankr. S.D.N.Y.) (the "Holdings Adversary Proceeding"), which seek damages and other remedies for distinct wrongs. More fundamentally, this is the only forum in which the relief exists. Under Section 11.1 of the Plan and Paragraph WW of the Confirmation Order, this Court retains exclusive jurisdiction over implementation of the Plan, including turnover of estate property. Holdings could not obtain a section 542(e) order in any other court, and invoking the one court with jurisdiction over Plan implementation is the opposite of forum shopping. The discovery stay in the Holdings Adversary Proceeding halts discovery on Holdings' affirmative claims; it does not suspend Holdings' right, as owner, to recover its own books and records, and nothing Holdings seeks here turns on the merits of those claims.

15. Reed Smith further contends that the "same privilege issues that apply to the Vacatur Proceeding and caused the Second Circuit to issue its stay ruling inherently apply" to Reed Smith's and the "Reed Smith-Related Former Professionals' Client Files." Reed Smith Obj. ¶ 3. But the Second Circuit allowed the Microsoft Order to remain in effect despite these same concerns. Reed Smith already advanced such arguments in its motion for the stay. *See Eletson Holdings Inc., et al. v. Levona Holdings Ltd.*, Case No. 25-445 (2d Cir.) (Docket No. 74.1 at 15) ("There is no question that the documents now in the possession of Goulston and Reorganized Holdings are subject to this Court's stay of the Turnover Order, which applies to all Eletson Documents, including the Reed Smith-Eletson (Greece) privileged documents. That should end the matter."). The argument did not persuade the Second Circuit to grant a stay (*see* Oct. 31 Order), and it cannot provide a basis for denying relief here.

16. Reed Smith's reliance on *Tekni-Plex* is misplaced. As the District Court already held in this very dispute, the *Tekni-Plex* exception "is inapplicable" and, in the court's words, "does

not apply to a bankruptcy proceeding in federal court." *See* Docket No. 1448, Ex. B (Dist. Ct. Feb. 14, 2025 Hr'g Tr.) at 108:22-25, 109:1-9 (citations omitted). Control of a debtor's attorney-client privilege in bankruptcy is a matter of federal law governed by *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343 (1985), not by a state-law rule fashioned for stock-sale mergers.

17. In any event, even if *Tekni-Plex* applied, it would favor Holdings. Reed Smith cites the case for the proposition that a transfer of corporate control to an opposing party does not give that party unfettered access to privileged communications concerning matters in dispute. *See* Reed Smith Obj. ¶ 36. But *Tekni-Plex* expressly distinguishes between communications concerning a company's general business operations and communications concerning the disputed transaction or litigation. *See Tekni-Plex, Inc. v. Meyner & Landis*, 674 N.E.2d 663, 671 (N.Y. 1996) (holding that the successor corporation controlled the privilege "with regard to confidential communications arising out of [the company's] operations," including pre-merger communications relating to general business matters, but not communications concerning the merger transaction where the parties' rights remained adverse). That distinction confirms that Holdings controls the privilege over the general business and financial records it seeks. *See Weintraub*, 471 U.S. at 349 ("[W]hen control of a corporation passes to new management, the authority to assert and waive the corporation's attorney-client privilege passes as well . . . . Displaced managers may not assert the privilege over the wishes of current managers."). Holdings has committed to hold enforcement of any turnover order in abeyance as to the Vacatur Documents.

18. Reed Smith's fallback reliance on *Sage Realty Corp. v. Proskauer Rose Goetz & Mendelsohn L.L.P.*, 91 N.Y.2d 30 (1997), fares no better. Reed Smith Obj. ¶ 36. *Sage Realty* is New York law addressing a client's access to its own file and a narrow exception where disclosure

would breach a duty owed to a genuine third party; it does not displace the federal standard governing turnover under section 542(e), nor the *Weintraub* rule that a corporation's privilege passes to new management. *Id.* at 37-38. The only "third parties" Reed Smith identifies are former management and Eletson Corporation (now a Delaware Corporation), whose corporate privilege as to the Debtors' materials passed to Holdings on the Effective Date. To the extent any Former Professional in fact holds materials belonging to a truly independent client, Holdings does not seek them and the Revised Proposed Order excludes them; the remedy is to log any such materials, not to withhold Holdings' entire file.

19. Reed Smith's contention that the Motion seeks "non-debtor clients and Reed Smith's own internal and defense files," (Reed Smith Objection ¶ 5) attacks a strawman. Neither the Motion nor the Revised Proposed Order seek such materials. Reed Smith's attempt to expand the requested relief to make it appear an overreach should be rejected: Holdings seeks only the property it owns and needs to operate its business, to avoid letting potential claims and causes of action to expire, and to identify contracts it may be unknowingly failing to perform, as authorized by section 542(e). *See In re Am. Metrocomm Corp.*, 274 B.R. 641, 652 (Bankr. D. Del. 2002) ("The legislative history of § 542(e) suggests that the provision was intended to deprive attorneys of the leverage acquired under state lien laws to receive full payment of professional fees over the debts of other creditors when the information withheld is necessary to the administration of the estate."). Within that scope, Reed Smith's cataloguing of arguably excludable categories is a reason to require a log identifying any withheld materials, not a reason to deny turnover of the Debtors' own books and records. *See In re McKenzie*, 716 F.3d 404, 419 (6th Cir. 2013); *In re Black Diamond Mining Co.*, 507 B.R. 209, 214 (E.D. Ky. 2014); *In re Am. Metrocomm Corp.*, 274 B.R. at 654.

20. The files at issue in the Motion, which may include bankruptcy-specific records concerning the Chapter 11 case, DIP financing, plan negotiations, and records relating to the Debtors' financial affairs generally, including contractual obligations and potential claims and causes of action asserted by or against third parties are categorically distinct from the materials covered by the Turnover Order Appeal, which is limited to files relating to the arbitration award, its enforcement, and its monetization. A ruling by the Second Circuit in favor of Reed Smith on the Turnover Order Appeal would address privilege with respect to Vacatur Documents only; it would not affect Holdings' right to the remaining Eletson Client File. The abeyance commitment ensures that any order entered by this Court does not interfere with the Second Circuit's jurisdiction over the files subject to the Stay Order.

21. Reed Smith's remaining argument is that separating the Vacatur Documents from the rest of the Eletson Client File would require a document-by-document review. Reed Smith Obj. ¶¶ 3, 29, 35. That objection is no basis to deny an owner its property, and it can be readily managed. The Former Professionals possess and organized their own files and are best positioned to identify the narrow subject-matter category subject to abeyance. The burden of segregating that category properly falls on the party withholding, not on Holdings or the Court. The Revised Proposed Order contemplates the following orderly course: the Former Professionals promptly turn over the plainly non-Vacatur records, including contracts, corporate and financial records, third-party correspondence, and materials concerning the Chapter 11 case, DIP financing, and Plan negotiations, and identify on a log any documents they contend fall within the Vacatur Documents or are otherwise withheld, preserving those for resolution if and when the Stay Order is lifted. That process honors the Second Circuit's direction to tailor these proceedings, and it spares the parties and the Court the duplication Reed Smith warns of.

22. Reed Smith argues that denying the Motion would not prejudice Holdings because Holdings has "already waited 21 months following the effective date." Reed Smith Obj. ¶ 29. Prejudice is not part of the standard under 542(e), and lapse of time does not extinguish Holdings' statutory right to its own property or amount to forfeiture, especially where any delay resulted from Reed Smith's own litigation conduct around the world. Reed Smith moreover identifies no prejudice to itself from turnover, only its own inconvenience, which is no basis to withhold another party's property.

23. While not addressed in the Motion because it is not part of the standard, Holdings faces significant prejudice in delay. Holdings continues to implement the Plan, work to resolve disputed claims, investigate potential causes of action, and run the business operations. These are functions that require or are aided by access to the Eletson Client File. Holdings cannot meaningfully assess potential causes of action without access to the documents on which those claims may be based. Additionally, there may be contracts that Holdings is a party to that it is entirely unaware of. As the Court is familiar, following the Effective Date, neither former management nor Reed Smith turned over any materials, documents, assets, or anything related to the Debtors despite a Confirmation Order directing them to cooperate in good faith. Holdings has since obtained significant information and assets through extraordinary and expensive efforts despite persistent obstructive behavior by the former owners and Reed Smith, but there is much the current owners still don't know about their own company and operations. This puts Holdings at great risk.

24. There are documents outside the scope of the Stay Order, and Holdings is plainly entitled to them under the law.

*[Remainder of Page Left Blank Intentionally]*

## CONCLUSION

For the foregoing reasons, Holdings respectfully requests that the Court (a) overrule the Reed Smith Objection, (b) enter the Revised Proposed Order, and (c) grant such other and further relief as may be just and proper.

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