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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)
	:	**Hearing Date**: September 28, 2026 at 11:00 a.m. (ET)
Debtor.	:	

ELETSON HOLDINGS INC.'S REPLY IN FURTHER SUPPORT OF ITS MOTION PURSUANT TO BANKRUPTCY RULE 2004 FOR AN ORDER AUTHORIZING THE ISSUANCE OF SUBPOENAS FOR THE PRODUCTION OF DOCUMENTS AND DEPOSITION TESTIMONY AND IN RESPONSE TO THE REED SMITH OBJECTION

[1] Prior to November 19, 2024 (the "Effective Date"), 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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TO THE HONORABLE JOHN P. MASTANDO III
UNITED STATES BANKRUPTCY JUDGE:

Eletson Holdings Inc. ("Holdings"), by and through its undersigned counsel, hereby submits this reply (the "Reply") in further support of the *Motion Pursuant to Bankruptcy Rule 2004 for an Order Authorizing the Issuance of Subpoenas for the Production of Documents and Deposition Testimony* [Dkt. No. 2109] (the "Motion")[1] and in response to the objection to the Motion filed by Reed Smith LLP [Dkt. No. 2110] (the "Reed Smith Objection"), and respectfully states:

PRELIMINARY STATEMENT

1. The Reed Smith Objection misconstrues both the purpose and scope of the Motion, which seeks only a narrow category of basic information to which Holdings is plainly entitled: the identity of those directing ongoing efforts to interfere with the confirmed and unstayed Plan and Confirmation Order, and the source of funding for those efforts. Tellingly, Proskauer itself—the party actually targeted by the Motion—has not objected, has not sought any protection from the discovery, and has not suggested that the inquiry is improper. The only objection comes from Reed Smith, a third party that urges this Court to shield Proskauer from discovery because, according to Reed Smith, that discovery may overlap with its own alleged misconduct, which is already the subject of a pending adversary proceeding.

2. Reed Smith's arguments fail at every turn. *First*, the so-called pending proceeding rule does not apply: Reed Smith does not even attempt to show that Document Request Nos. 1-3 or Examination Topics Nos. 1-3 implicate that rule, Examination Topic No. 4 concerns the circumstances of Proskauer's retention rather than anything Reed Smith did, and Document

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

Request No. 4 is confined by its own terms to Proskauer's appearance in the Vacatur Proceeding, conduct that arose a year *after* the adversary proceeding was commenced and months *after* the amended adversary complaint was filed. *Second*, the Stay Order in the adversary proceeding protects Reed Smith from discovery in that proceeding—it does not and cannot immunize a separate, independent law firm from Rule 2004 discovery concerning that other firm's own conduct. And *third*, Reed Smith's privilege concerns are already fully addressed by the privilege log procedure in the Proposed Order.

3. Reed Smith's objection is built on a contradiction. The Motion seeks information only about who directed and funded Proskauer's unauthorized appearance and filings in the Vacatur Proceeding and 25-1313 Appeal—an inquiry that would not implicate Reed Smith at all unless Reed Smith were in fact the party directing or funding Proskauer's conduct. If Reed Smith were prepared to say that, then its arguments might have some footing. But Reed Smith does not say that. Instead, it asks this Court to cut off the inquiry on the grounds that the answers might implicate Reed Smith—without offering any explanation for why that would be so. Reed Smith cannot have it both ways: it cannot insist that the discovery threatens it while refusing to acknowledge the only basis on which that could be true.

4. The Court should overrule the Reed Smith Objection and grant the Motion.

RESPONSE TO REED SMITH OBJECTION

I. THE PENDING PROCEEDING RULE DOES NOT APPLY HERE

5. Reed Smith argues that this Court should deny the Motion because it seeks information "regarding subjects that are already at issue in a pending adversary proceeding, making the use of Rule 2004 improper." Reed Smith Obj. ¶ 1. This argument fails for at least two independent reasons.

A. Reed Smith Has Not Articulated Any Basis to Deny the Motion as to Document Request Nos. 1-3 or Examination Topic Nos. 1-3

6. Reed Smith does not even attempt to articulate how Document Request Nos. 1-3, or Examination Topics Nos. 1-3 implicate the pending proceeding rule, nor could it. *See* Reed Smith Obj. ¶¶ 14-23.

7. Those document requests and examination topics seek information about the identity of the persons or entities that retained, directed, instructed, authorized, or purported to authorize Proskauer to act on behalf of Holdings or Corp. (*see* Request No. 1; Topic No. 1); persons or entities that paid, agreed to pay, advanced, reimbursed, guaranteed, or otherwise funded any fees, expenses, or costs incurred by Proskauer in the Vacatur Proceeding or any other matter (*see* Request No. 2; Topic No. 2); and the source of funding for any Proskauer purported engagement on behalf of Holdings or Corp. (*see* Request No. 3; Topic No. 3). That information concerns Proskauer's own engagement by undisclosed parties purportedly on behalf of Holdings and Corp.—not any conduct of Reed Smith that is the subject of *Eletson Holdings, Inc. v. Kertsikoff*, Adv. Pro. No. 25-01120-JPM (Bankr. S.D.N.Y.) (the "Reed Smith Adversary Proceeding").

8. Accordingly, the Court should overrule the Reed Smith Objection insofar as it relates to these document requests and examination topics.

B. Document Request No. 4 and Examination Topic No. 4 Target New Conduct Not at Issue in the Reed Smith Adversary Proceeding

9. The Reed Smith Objection focuses principally on Document Request No. 4, which seeks from Proskauer "[a]ll Communications with Reed Smith LLP concerning Proskauer's purported representation of Holdings or Eletson Corp. in the Vacatur Proceeding." Proposed Order, Ex. 1, Request No. 4. The pending proceeding rule does not apply to that document request either. By its terms, Document Request No. 4 reaches only communications concerning Proskauer's representation of Holdings and Corp. in the Vacatur Proceeding. It does not reach

Proskauer's role alongside Reed Smith in Appeal No. 25-1313 or Proskauer's representation of Reed Smith in the Turnover Order Appeal, which are the only instances of Proskauer and Reed Smith working together that the Reed Smith Objection identifies. *See* Reed Smith Obj. ¶¶ 3-5.

10. The Rule 2004 examination notice attached to the Proposed Order defines the "Vacatur Proceeding" as "the case captioned *Eletson Holdings, et al. v. Levona Holdings Ltd., et al.*, Civil Action No. 23-CV-7731 (LJL) currently pending in the United States District Court for the Southern District of New York." *See* Proposed Order, Ex. 1, Definition 14. Proskauer did not appear in the Vacatur Proceeding on behalf of Holdings and Corp. until July 29, 2026, when it filed the Notices—*over seven months after the First Amended Complaint was filed by Holdings in the Reed Smith Adversary Proceeding and a year after that adversary proceeding was commenced*. *See* Adv. Pro. No. 25-01120, Dkt. Nos. 1 (Compl.) & 59 (First Am. Compl.).

11. That timing is dispositive. The First Amended Complaint asserts claims against Reed Smith based on, among other things, allegations that Reed Smith "has filed briefs purportedly on behalf of Holdings and Corp., but which take positions directly against their interests" and has "directed other firms to make similar filings." Adv. Pro. No. 25-01120, Dkt. No. 59 ¶¶ 352-53, 379. Proskauer's July 29, 2026, filings in the Vacatur Proceeding postdate the First Amended Complaint by months and constitute new, independent conduct that could not have been within the scope of the Reed Smith Adversary Proceeding when it was filed. The same is true of the requests for production on which Reed Smith builds its overlap argument. Reed Smith Obj. ¶¶ 7, 19. Holdings served those requests on July 22, 2026, a week before Proskauer first appeared in the Vacatur Proceeding. Nor does the allegation, pleaded on information and belief, that Reed Smith "directed other firms to make similar filings" bring Proskauer's later conduct within the adversary proceeding. By design, Document Request No. 4 is directed at permitting Holdings to obtain

information relating to this *new* interference with the Plan and Confirmation Order—not to circumvent any protections that may be afforded to Reed Smith in connection with past conduct at issue in the Reed Smith Adversary Proceeding.

12. Examination Topic No. 4 does not implicate the rule at all. It asks about the corporate records, governance materials, and engagement agreements obtained by Proskauer before the firm filed papers in Holdings' name. *See* Proposed Order, Ex. 1, Examination Topic No. 4. That is a question about the information provided to Proskauer in connection with its own engagement, and nothing in the First Amended Complaint puts that at issue. There is no basis to bar this examination topic.

13. The cases on which Reed Smith relies confirm this distinction. In *In re Enron Corp.*, 281 B.R. 836 (Bankr. S.D.N.Y. 2002), the court denied a Rule 2004 motion because it sought discovery relating "entirely" to stayed litigation. *Id.* at 842. Similarly, in *In re Bennett Funding Grp., Inc.*, 203 B.R. 24, 29 (Bankr. N.D.N.Y. 1996), the court denied Rule 2004 discovery where the parties and subject matter were "inseparable" from a pending adversary proceeding. Neither case supports Reed Smith's position. Here, the Rule 2004 discovery targets Proskauer—a separate law firm that is not a party to the Reed Smith Adversary Proceeding—regarding conduct that arose entirely *after* the adversary complaint was filed. Because Proskauer's unauthorized filings postdate the First Amended Complaint by months, this discovery is neither "entirely" about the adversary proceeding nor "inseparable" from it. The pending proceeding rule provides no basis to deny the Motion. *See, e.g., In re Washington Mut., Inc.*, 408 B.R. 45, 53 (Bankr. D. Del. 2009) (allowing Rule 2004 examination where the party did not seek discovery of evidence related to the adversary action and where the party from whom discovery was sought was not a party to the pending proceeding).

II. THE STAY OF DISCOVERY IN THE REED SMITH ADVERSARY PROCEEDING DOES NOT INSULATE PROSKAUER FROM RULE 2004 DISCOVERY RELATED TO PROSKAUER'S OWN CONDUCT

14. Reed Smith next argues that granting the Motion would permit Holdings to circumvent this Court's *Order Granting Reed Smith Defendants' Motion to Stay Discovery Subject to Interlocutory Appeal of Denial to Compel Arbitration* [Adv. Pro. Dkt. No. 131] (the "Stay Order") in the Reed Smith Adversary Proceeding. But that concern is inapplicable here.

15. The Stay Order protects Reed Smith from being compelled to respond to discovery while the denial of its motion to compel arbitration is on appeal. *See* Stay Order at 3. It does not, and cannot, protect Proskauer—a separate, independent law firm—from being subject to discovery about its own involvement in ongoing efforts to interfere with the Plan and Confirmation Order.

16. The information Holdings seeks from Proskauer—the identity of who retained it, who is directing it, and who is paying its fees—concerns Proskauer's own engagement by unknown parties purportedly to represent Holdings and Corp. It cannot fairly be characterized as discovery directed at Reed Smith. That there might be Reed Smith communications with Proskauer responsive to Document Request No. 4 does not transform a third-party Rule 2004 examination into a violation of the Stay Order. Accepting Reed Smith's position would mean that any time a party under a discovery stay has communicated with a non-party, the stay would immunize that non-party from all related discovery—even discovery, like this, that the non-party itself does not resist.

III. THE APPELLATE SANCTIONS CASES AND THE SECOND CIRCUIT'S JUNE 2025 ORDER ARE BESIDE THE POINT

17. Reed Smith's reliance on *Schoenberg v. Shapolsky Publishers, Inc.*, 971 F.2d 926, 935 (2d Cir. 1992), and *Cheng v. GAF Corp.*, 713 F.2d 886, 891-92 (2d Cir. 1983), is inapposite. Both cases hold only that a district court may not sanction an attorney for the act of taking or

pursuing an appeal to a higher court. *See Schoenberg*, 971 F.2d at 935 ("it is improper for a district court to impose sanctions for appeals taken to this Court"); *Cheng*, 713 F.2d at 891-92 (vacating a fee award imposed on counsel "for appeals taken to [the Second Circuit] and the Supreme Court"). The Motion seeks no such thing. Holdings does not ask this Court to sanction Proskauer, to penalize Proskauer for filing a notice of appeal, or to punish anyone for pursuing appellate relief. Indeed, if the Motion could even remotely be construed that way, one would expect Proskauer itself to have objected. It did not. Those cases concern whether counsel may be punished for advancing an authorized client's appeal. They say nothing about whether it is appropriate to inquire about the identity of who retained a lawyer without authorization.

18. Nor does the March 12, 2025 statement by Holdings' counsel that a proper party "can" take an appeal advance Reed Smith's position. Holdings has never argued that Proskauer or any other law firm is barred from filing an appeal *on behalf of a party with actual authority to authorize them to do so*.[2] The question the Motion seeks to answer is who asserted they had such authority when they directed Proskauer to act for Holdings and Corp.

19. Nor does the Second Circuit's June 25, 2025 order in Appeal No. 25-176 assist Reed Smith. *See* Reed Smith Obj. ¶ 10. That order denied a motion to dismiss or remand without prejudice and expressly reserved for the merits panel the parties' arguments about who controls Holdings and what effect that control has on the appeal. It decided nothing about control. It

[2] The March 12, 2025 statement is misconstrued by Reed Smith. Holdings' position has been consistent: a person or entity with authority to act for Holdings may exercise Holdings' appellate rights, but former owners or other unauthorized persons may not do so on Holdings' behalf. As Holdings' counsel explained shortly thereafter: "Eletson Holdings Inc. had and has an appellate right to appeal the confirmation decision and confirmation order. It still has the right today, but it has new owners who do not wish to pursue those rights." April 3, 2025 Hr'g Tr. 14:18-15:1. The issue, then and now, is not whether Holdings possesses appellate rights, but who has authority to exercise them on Holdings' behalf.

certainly did not hold that anyone may retain counsel in Holdings' name without disclosing who they are.

IV. REED SMITH'S PRIVILEGE OBJECTION DOES NOT JUSTIFY DENYING THE MOTION OR MODIFYING THE PROPOSED ORDER

20. Reed Smith argues that Document Request No. 4 potentially sweeps in communications that may be protected by Reed Smith's own attorney-client privilege and work-product protections, given that Proskauer has represented Reed Smith in connection with the "Turnover Order Appeal." Reed Smith Obj. ¶¶ 5, 22-23. This is not a basis to deny the Motion or modify the Proposed Order.

21. The possibility that some subset of documents otherwise responsive to the Rule 2004 document requests may be privileged is already addressed in the Proposed Order. *See* Proposed Order ¶ 6. Paragraph 6 of the Proposed Order contemplates that if Proskauer withholds any responsive documents based on an asserted privilege, then it shall provide a privilege log in accordance with Bankruptcy Rule 7026. *Id*. This procedure fully and adequately addresses how privilege issues are handled. Should disputes actually arise about the validity of specific privilege assertions made by Proskauer, those disputes can be adjudicated by the Court at that time.

RESERVATION OF RIGHTS

22. Nothing in this Reply shall be deemed to be an admission or concession with respect to any aspects of the Reed Smith Objection not addressed herein. Holdings reserves its right to respond to any other aspect of the Reed Smith Objection during the hearing scheduled for September 28, 2026, at 11:00 a.m. (ET).

CONCLUSION

23. For the foregoing reasons, the Court should overrule the Reed Smith Objection and grant the Motion.

Respectfully submitted,

New York, New York
Dated: September 24, 2026

/s/ Jared C. Borriello

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