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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.	:	

ELETSON HOLDINGS INC.'S OBJECTION TO REED SMITH LLP'S MOTION TO STAY THE BANKRUPTCY COURT TURNOVER ORDER PENDING APPEALS

[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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TO THE HONORABLE JOHN P. MASTANDO III
UNITED STATES BANKRUPTCY JUDGE:

Eletson Holdings Inc. ("Holdings"), by and through its undersigned counsel, submits this objection (this "Objection") to Reed Smith LLP's motion (the "Motion") [Dkt. No. 2120] to stay the Court's *Order (I) Authorizing Turnover of the Eletson Client Files and (II) Confirming Transfer of Attorney Client Privilege* (the "Turnover Order") [Dkt. No. 2117] pending Reed Smith's (as-yet-unfiled) appeal of the Turnover Order and related opinion (the "Turnover Opinion") [Dkt. No. 2116], and respectfully states as follows:[2]

PRELIMINARY STATEMENT

1. One week before Reed Smith filed the Motion, this Court considered and rejected every argument in it. On August 25, 2026, Reed Smith told the Court that the Second Circuit's June 25, 2025 order governs "most if not all of the documents at issue," that the pending appeals will resolve privilege and control for the entire client file, that segregating the arbitration materials would require an "extraordinarily burdensome" review, that Holdings waited too long, and that *Tekni-Plex* bars a law firm from returning a reorganized client's file to its new management. ("Reed Smith Opposition") [Dkt. No. 2100] ¶¶ 4, 26, 29, 36. The Court addressed each point in the Turnover Opinion. The Motion identifies no new fact, no new authority, and no change in circumstance. It is a motion for reconsideration filed under the caption of Bankruptcy Rule 8007, and it should be denied.

2. The Motion fails at the threshold because Reed Smith cannot show that it will suffer irreparable harm. Reed Smith does not hold the privilege it invokes. Holdings does, as paragraph 4 of the Turnover Order confirms and as the Supreme Court held four decades ago in *Commodity Futures Trading Commission v. Weintraub*, 471 U.S. 343, 348 (1985). Returning a client's file to

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

the client is not a disclosure. It waives nothing, destroys nothing, and exposes nothing to an outsider. Every decision Reed Smith cites for the proposition that privileged information cannot be "unlearned" involved compelled production to an adversary in discovery. None involved a law firm's refusal to hand a company its own records. Without that premise, all that remains of Reed Smith's claimed injury is the cost of reviewing its files. That is not irreparable harm as a matter of settled law, and Reed Smith admits that it may seek to recover its costs. *See* Motion ¶ 22 n.8.

3. The Motion also ignores the appellate ruling that most directly disposes of it. In August 2025, Reed Smith raised the identical harm argument before the Second Circuit – that producing Eletson documents over which it claimed privilege would cause "grave and irreparable harm" – in a harder case: the recipients there were Holdings' alleged adversaries at Levona. *See* District Court Turnover Appeal (as defined herein), Dkt. No. 86.1. On October 31, 2025, the Second Circuit denied the motion, holding that Reed Smith had "not made a showing that an injunction or stay is justified." October 31 Second Circuit Order (as defined below) at 2. If the Second Circuit would not stay production to an adversary, there is no basis for staying an order returning Holdings' own records to Holdings.

4. Reed Smith's likelihood of success showing is no stronger. Its principal argument is that the Second Circuit, in a brief stay order entered on June 25, 2025, has by implication already found a sufficient likelihood of success. Not so. The June 25, 2025 order stayed Judge Liman's earlier turnover order, which is confined to the very arbitration-related Vacatur Documents that this Court has carved out of the current Turnover Order. The June 25, 2025 order made no findings, expressly declined to decide who controls Holdings, and refused Reed Smith's request to stay proceedings in this Court. Reed Smith thus asks this Court to read the Second Circuit's order as accomplishing what the Second Circuit declined to do (and grant the stay of the

Confirmation Order Reed Smith failed to seek two years ago). Reed Smith's remaining merits theories depend on the proposition that the Plan never became effective. This Court and the District Court have rejected that proposition repeatedly, and Reed Smith's own lawyer disclaimed it in this Court when he said, on December 16, 2024, that "the effective date occurred." Dec. 16, 2024 Hr'g Tr. at 73:18–19.

5. Finally, the Motion rests on a material misrepresentation. Reed Smith says that any delay caused by a stay will be "minimal," premising that claim on the notion that a determinative ruling from the Second Circuit in certain related appeals is "imminent." Motion ¶¶ 1, 31. Yet just eight days before filing the Motion, Reed Smith asked the Second Circuit to stay – indefinitely – the very appeals that Reed Smith now tells the Court are likely to be decided "in the near future." *See* 2d Cir. Case No. 25-445, Dkt. No. 143.1; Motion ¶ 33. If that effort succeeds, then any stay issued by this Court would be neither brief nor harmless. It would last until the conclusion of an appeal Reed Smith has not yet filed, or until two Second Circuit appeals that Reed Smith is actively seeking to postpone are finally decided. Indeed, even that timeline is aspirational, if not fanciful. Second Circuit appeal number 25-176 addresses whether Judge Liman was correct to dismiss so-called Provisional Holdings' appeal of the Plan. If Provisional Holdings prevails, that would result only in a remand to Judge Liman to consider the merits of the Plan. At that time, one can only assume that Reed Smith will continue to object to the turnover of the client file until exhaustion of the remand proceedings and related appeals. All the while, the unstayed Plan will remain in effect, yet Holdings will continue to be deprived of its property.

6. Holdings has been kept from its own books and records for twenty-two months, notwithstanding a Confirmation Order directing cooperation and enjoining interference, a cease-and-desist demand delivered to Reed Smith eight days after the Effective Date, and a motion to

obtain the file that Holdings filed seven weeks after the Effective Date. Reed Smith cannot resist turnover for nearly two years, seek to postpone the very appeals it says this Court should await, and then cite the passage of time as proof that Holdings does not need its property.

7. The Motion and the alternative request for an administrative stay should be denied.

RELEVANT BACKGROUND

A. The Plan, the Effective Date, and the Termination of Reed Smith

8. The Court confirmed Holdings' chapter 11 plan (the "Plan") [Dkt. No. 1132] by order entered November 4, 2024 [Dkt. No. 1223] (the "Confirmation Order"). The Plan became effective on November 19, 2024 (the "Effective Date"). No party sought or obtained a stay of the Confirmation Order. Turnover Opinion at 9–10. On the Effective Date, all property of each estate, including all Retained Causes of Action, vested in reorganized Holdings, and reorganized Holdings was authorized to use that property and prosecute its claims "without supervision or approval by the Bankruptcy Court." Plan § 5.2(c); *see also id.* §§ 5.15(b), 7.6.

9. While Reed Smith previously served as counsel to Holdings, Holdings terminated Reed Smith's representation on all Eletson matters effective November 19, 2024. Reed Smith acknowledged the change of control. Asked by this Court on December 16, 2024 whether Reed Smith was challenging the Effective Date, Reed Smith's counsel answered: "The effective date occurred. So far as we know, Your Honor, the effective date occurred." Dec. 16, 2024 Hr'g Tr. at 73:16–19. Reed Smith has confirmed, in writing, that its "representation of Eletson Holdings, Inc. terminated upon the Effective Date," Dkt. No. 1416, Ex. 2 at 28 (January 28, 2025 letter from Reed Smith to Holdings' counsel), and that "Reed Smith has never taken the position that it represents Reorganized Holdings," Dkt. No. 1287 ¶ 74 (Reed Smith opposition to sanctions motion).

B. Holdings Promptly Seeks Its File, and Judge Liman Orders Turnover

10. Holdings, as this Court well knows, has been engaged in long-running litigation with its former owners and others before Judge Liman concerning the vacatur of a fraudulently obtained arbitration award. *See generally* Case No. 1:23-cv-7331 (the "Vacatur Proceedings"). On January 7, 2025, seven weeks after the Effective Date, Holdings moved in the Vacatur Proceedings to displace Reed Smith as counsel and to compel turnover of the Eletson client file. Vacatur Proceedings, Dkt. Nos. 242-46.

11. On February 14, 2025, Judge Liman granted both requests. He held, among other things, that under the confirmed Plan "Eletson Holdings' new board can choose its lawyers," that "Reed Smith has no authority to speak on behalf of Eletson Holdings," and that "[b]y virtue of the bankruptcy, there exists new owners of Eletson Holdings and new management. They are the owners of the privilege and of the privileged documents." Vacatur Proceeding, Dkt. No. 270 (Feb. 14 Hr. Tr.) (the "February 14 Ruling") at 105:24–106:1, 106:20–21, 108:11–14.

12. The resulting order (the "District Court Turnover Order") [Vacatur Proceeding, Dkt. No. 269] incorporated by reference the oral ruling. The oral ruling made clear that turnover applied to "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." February 14 Ruling at 107:1–5. By its terms, it did not reach documents created on or after November 19, 2024. *Id*. at 107:9–11.

C. The Second Circuit Stays the District Court Turnover Order but Declines to Stay Proceedings in This Court or the District Court

13. Reed Smith appealed the District Court Turnover Order (the "District Court Turnover Appeal") (2d Cir. Case No. 25-445). Meanwhile, parties purporting to represent Holdings had also appealed confirmation of the Plan, Judge Liman had dismissed that appeal on

Holdings' request, and the same unauthorized parties had purported to appeal Judge Liman's dismissal to the Second Circuit (the "Plan Confirmation Appeal") (2d Cir. Case No. 25-176).

14. On June 11, 2025, Reed Smith asked the Second Circuit for an injunction preventing Holdings from obtaining any further documents Reed Smith considered privileged, and for a stay of all proceedings in this Court and the District Court relating to "any privileged documents" of Eletson. Plan Confirmation Appeal, Dkt. No. 47.1 at 1.

15. On June 25, 2025, a motions panel entered a single order in the District Court Turnover Appeal and the Plan Confirmation Appeal (the "June 25 Order"). 2d Cir. Case No. 25-445, Dkt. No. 66.1; 2d Cir. Case No. 25-176, Dkt. No. 50.1. In the Plan Confirmation Appeal, the panel denied a motion to dismiss or remand, but noted its denial was "without prejudice to the parties raising their arguments regarding who controls Eletson Holdings, Inc., and what effect that control has on the appeal, before the merits panel." June 25 Order at 2. In the District Court Turnover Appeal, the panel granted Reed Smith's stay motion with a citation to "*Nken v. Holder*, 556 U.S. 418, 434 (2009) (discussing stay factors)." *Id.* The panel then disposed of the remainder of Reed Smith's request:

> We decline to grant Appellant's request to stay the district court or bankruptcy court proceedings, but trust that both courts will tailor their proceedings to protect the privileged property at issue.

Id. at 2–3. The June 25 Order contains no findings of fact or discussion of the merits.

16. Just two days later, Reed Smith invoked the June 25 Order in the Vacatur Proceedings in an effort to halt briefing on Levona's motion to compel production of documents that Levona contended fell outside the privilege under the crime-fraud exception. Vacatur Proceeding, Dkt. No. 453 at 1 (June 27, 2025). Judge Liman refused, holding that the requested stay "would only lead to further delay, and for no good reason." Vacatur Proceeding, Dkt. No.

462 at 2 (June 30, 2025). He noted that "Provisional Holdings," on whose behalf Reed Smith also purported to move, had not entered an appearance. *Id.* at 1 n.1.

D. The Second Circuit Rejects Reed Smith's Effort to Broaden the Stay

17. On June 11, 2025, this Court entered an order (the "Microsoft Order") [Dkt. No. 1691], authorizing Holdings and its designee to obtain administrative level access to the Eletson Microsoft account. On July 14, 2025, Reed Smith filed an emergency motion in the Second Circuit to enjoin the review, use, or disclosure of Eletson documents pending appeal, including documents obtained from Holdings' computer systems. Plan Confirmation Appeal, Dkt. No. 68.1 at 1. On July 18, 2025, the Second Circuit denied Reed Smith's request for an administrative stay pending a panel decision. Plan Confirmation Appeal, Dkt. No. 72.1.

18. On August 26, 2025, the District Court granted a separate motion by Levona to compel production of documents obtained under the Microsoft Order, observing that "Reed Smith's representation of Holdings was terminated as a result of the Confirmation Order which became effective in November 2024 and was not appealed or stayed." *Eletson Holdings Inc. v. Levona Holdings Ltd.*, No. 23-cv-7331, 2025 WL 2452351, at *3 (S.D.N.Y. Aug. 26, 2025). The next day Reed Smith moved the Second Circuit, on an emergency basis, to stay that order. District Court Turnover Appeal, Dkt. No. 86.1 (the "August 2025 Stay Motion"). Reed Smith argued that if the documents "are turned over to its adversary Levona, it will not only cause grave and irreparable harm," that "[a]ny vestige of the privilege will be obliterated," and that the recipients "cannot be made to unknow whatever they learn from the Documents." August 2025 Stay Motion at 1, 7.

19. On October 31, 2025, the same Second Circuit motions panel that had decided the earlier stay request denied the new one. District Court Turnover Appeal, Dkt. No. 105.1 (the "October 31 Second Circuit Order"). It held, first, that Reed Smith had not sought the relief in the

district court and, "[s]econd, and in any event, the Movants have not made a showing that an injunction or stay is justified," citing *Nken* and *Respect Maine PAC v. McKee*, 562 U.S. 996, 996 (2010). *Id.* at 2. The panel described Holdings' owners as "the current owners of Eletson Holdings, Inc. (under the terms of the bankruptcy reorganization plan)." *Id.*

E. The Turnover Motion, the Turnover Opinion, and the Turnover Order

20. After the District Court Turnover Order was stayed by the Second Circuit, Holdings asserted its right to the client files in an adversary proceeding it commenced on July 30, 2025. *Eletson Holdings Inc. v. Kertsikoff*, Adv. Pro. No. 25-01120 (JPM), Dkt. No. 59 ¶ 450 (the "Holdings Adversary Proceeding"). Reed Smith moved to compel arbitration and to stay discovery, and on August 3, 2026, after the Court had denied Reed Smith's motion to compel arbitration, the Court stayed the adversary proceeding as to Reed Smith pending Reed Smith's interlocutory appeal. Adv. Pro. No. 25-01120 (JPM), Dkt. No. 131. Eleven days later, on August 14, 2026, Holdings filed its motion, in the bankruptcy proceeding, under section 542(e) for an order authorizing Reed Smith and other former professionals to turn over the Eletson Client Files and confirming that the prepetition privilege remains with Holdings under its new management. Dkt. No. 2094 (the "Turnover Motion").

21. From the first page, the Turnover Motion made clear that it was not seeking immediate turnover of the subset of the file subject to the District Court Turnover Appeal and committed to hold enforcement as to those documents in abeyance. Turnover Motion ¶ 4 n.2. Holdings' reply and revised proposed order defined the carved-out category, the "Vacatur Documents," by the same subject matter as the District Court Turnover Order, and proposed that the Former Professionals promptly produce the plainly non-Vacatur Documents and log anything withheld. Dkt. Nos. 2104 ¶¶ 3, 21; 2105.

22. On September 15, 2026, the Court granted the Turnover Motion. The Court held that it is bound by the Second Circuit, but that "the Motion does not seek relief as to documents within the scope of the Second Circuit's Stay Order." Turnover Opinion at 8. It held that the documents sought, including documents concerning "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," fall within section 542(e), *id.* at 8–9; that the Plan is effective and binding, *id.* at 9–10; that Reed Smith's burden objection "is no basis to deny an owner its property," *id.* at 10; that *Tekni-Plex* does not apply and in any event supports Holdings as to the documents sought, *id.* at 10–12; and that *Sage Realty* supports turnover, *id.* at 11 n.8. The Court directed that Reed Smith "can (and shall) 'promptly turn over the plainly non-[Vacatur Documents]'" and "identify on a log any documents they contend fall within the Vacatur Documents or are otherwise withheld." *Id.* at 10.

23. The Turnover Order confirms that "[t]he attorney-client privilege held by Holdings prepetition with respect to the Former Professionals remains with Holdings and is now controlled by its new management following the Effective Date." Turnover Order ¶ 4. It excludes documents outside the Eletson Client File as defined in the engagement letters, *id.* ¶ 10, and provides that "[t]he Former Professionals are not required to produce the Vacatur Documents," with enforcement held in abeyance as to those documents "pending the Second Circuit's decision in the Vacatur Proceeding." *Id.* ¶ 11. Turnover is due once the time to appeal has expired or, if a Former Professional appeals, once it "has appealed but has not obtained a stay pending appeal." *Id.* ¶ 14. Thus, with regard to the documents covered by the Vacatur Proceeding, there is no need to seek a stay because it is already built into the Turnover Order.

LEGAL STANDARD

24. A stay pending appeal is "an intrusion into the ordinary processes of administration and judicial review, and accordingly is not a matter of right, even if irreparable injury might otherwise result to the appellant." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (internal quotation marks and citations omitted). The movant "bears the burden of showing that the circumstances justify an exercise of that discretion." *Id.* at 433–34. Of the four factors a court considers, the first two, likelihood of success and irreparable harm, "are the most critical." *Id.* at 434. It is not enough that the chance of success be "better than negligible," and "simply showing some 'possibility of irreparable injury' fails to satisfy the second factor." *Id.* at 434–35 (citations omitted).

25. Probable irreparable harm is the "principal prerequisite" for a stay pending appeal. *In re Adelphia Commc'ns Corp.*, 361 B.R. 337, 347 (S.D.N.Y. 2007); *In re Sabine Oil & Gas Corp.*, 548 B.R. 674, 681 (Bankr. S.D.N.Y. 2016). The harm must be "neither remote nor speculative, but actual and imminent." *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007) (cleaned up). Reed Smith cites *Adelphia* for the proposition that a movant may prevail without satisfying every factor, Motion ¶ 14, but the same decision also identifies probable irreparable harm as the "principal prerequisite" a movant cannot do without. *In re Adelphia*, 361 B.R. at 347.

26. Reed Smith recites the *Nken* "strong showing" standard, Motion ¶ 13, and then applies a "serious questions" standard drawn from an unreported district court decision, *Starke v. SquareTrade, Inc.*, 2017 WL 11504834, at *1 (E.D.N.Y. Dec. 15, 2017). Motion ¶ 23. The different standard does not help. Where the serious-questions standard applies, it requires both "sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief." *Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d

Cir. 2010) (internal quotation marks omitted). The hardships here do not tip toward Reed Smith at all, let alone decidedly. And no version of the sliding scale Reed Smith invokes, *see In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007), permits a stay where the movant cannot show irreparable harm of its own.

ARGUMENT

I. REED SMITH CANNOT SHOW IRREPARABLE HARM

27. The Motion fails at the threshold because Reed Smith cannot show irreparable harm. The first form of harm it identifies – the risk of disclosure of privileged materials – is both beside the point (since the disclosure here is *to the client*) and in any event is no harm at all to Reed Smith (which is not the holder of the privilege). The second form of harm – the burden of compliance – is a monetary cost of litigation and, by definition, is not irreparable harm. Moreover, both are entirely speculative forms of harm, and their invocation here is inconsistent with the Second Circuit's decision *not* to stay the production of the Microsoft documents.

A. Disclosure to the Client Is No Harm at All – Let Alone a Harm to Reed Smith

28. The privilege at issue belongs to Holdings. "[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," and "[d]isplaced managers may not assert the privilege over the wishes of current managers." *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 349 (1985). This Court has confirmed that the Debtors' prepetition privilege "remains with Holdings and is now controlled by its new management." Turnover Order ¶ 4. Judge Liman held the same thing more than nineteen months ago. February 14 Ruling at 108:11–19.

29. That settles the irreparable harm question. The harm Reed Smith describes is the loss of confidentiality that follows disclosure: once privileged communications are revealed, "no later ruling can restore their confidentiality." Motion ¶ 3. But delivering a client's file to the client

reveals nothing to anyone outside the privilege. Holdings is not a stranger to its own communications with its own counsel. A privilege holder does not waive its privilege by receiving its own file, and Holdings has expressly preserved every privilege it holds. Turnover Motion ¶ 17 n.3. No confidentiality is lost, so no confidentiality needs restoring.

30. The authorities Reed Smith cites prove the point by contrast. Motion ¶ 17. Each concerned the production of privileged material by a party to an adversary. *See, e.g.*, *Chase Manhattan Bank, N.A. v. Turner & Newall, PLC*, 964 F.2d 159, 165 (2d Cir. 1992) (expressing concern that opposing "attorneys cannot unlearn what has been disclosed to them in discovery").[3] Here the recipient is the privilege holder, and the party resisting is a law firm whose representation ended on the Effective Date. Reed Smith cites no case in which these principles have been extended to protect a former lawyer from its own client. And even where privileged material does reach an adversary, the Supreme Court has held that the harm is ordinarily remediable: "[a]ppellate courts can remedy the improper disclosure of privileged material in the same way they remedy a host of other erroneous evidentiary rulings: by vacating an adverse judgment and remanding for a new trial in which the protected material and its fruits are excluded from evidence." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 109 (2009).

31. Even if disclosure risked harm (and it does not), the harm would not befall *the movant*, Reed Smith. The attorney-client privilege "belongs solely to the client." *In re von Bulow*, 828 F.2d 94, 100 (2d Cir. 1987). Its loss, therefore, is a harm only to the client. Here, there is no

[3] Moreover, the cases Reed Smith cites in support of the notion that the Second Circuit may permit interlocutory appeal actually support the denial of the stay in this case. In both of Reed Smith's cases, the motions panel of the Second Circuit had denied a motion to stay (before issuing a writ of mandamus). *See In re Cnty. of Erie*, 473 F.3d 413, 423 (2d Cir. 2007) (granting petition of writ of mandamus directing court to vacate discovery order, noting that a Second Circuit motions panel had denied defendant's motion for a stay pending appeal); *Chase Manhattan Bank, N.A. v. Turner & Newall, PLC*, 964 F.2d 159, 162, 166 (2d Cir. 1992) (granting petition of writ of mandamus, while dismissing the interlocutory appeal for lack of jurisdiction and noting that the Magistrate Judge, the District Court Judge, and the Second Circuit motions panel had denied defendant's application for a stay pending the appeal).

client other than Holdings, which opposes the stay. The interests of former management and ownership are irrelevant. *Weintraub*, as noted, forecloses former management's assertion of the privilege over current management's wishes. 471 U.S. at 349. The vehicle through which former management has tried to act, "Provisional Eletson Holdings," has been held to have "no legal existence." *In re Eletson Holdings Inc.*, 2025 WL 2916904, at *1 (S.D.N.Y. Oct. 14, 2025). And, importantly, the only movant is Reed Smith. The first *Nken* factor asks "whether the *applicant* will be irreparably injured absent a stay." 556 U.S. at 434 (emphasis added). Reed Smith identifies no injury to itself, as distinct from the displaced constituencies whose position it continues to advance, and it cannot borrow theirs.

B. The Cost of Compliance Is Not Irreparable Harm, and Reed Smith Asserts It Is Compensable

32. Reed Smith's second theory of harm is the cost of a document-by-document review. Motion ¶¶ 4, 22. The Supreme Court has rejected that theory in terms:

> Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Sampson v. Murray, 415 U.S. 61, 90 (1974) (internal quotation marks omitted). "Mere litigation expense, even substantial and unrecoverable cost, does not constitute irreparable injury." *Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974); *see also FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 244 (1980).[4] This Court has already held that the same burden objection "is no basis to deny an owner its property." Turnover Opinion at 10.

[4] This is in keeping with the well-settled principle that a monetary loss will not ordinarily constitute irreparable harm. *See, e.g., Sperry Int'l Trade Inc. v. Government of Israel*, 670 F.2d 8, 12 (2d Cir. 1982).

33. Reed Smith's footnote removes any doubt. There Reed Smith "reserves the right to seek reimbursement for its costs and expenses, including attorneys' fees, in undertaking any review and production." Motion ¶ 22 n.8. A harm the movant itself says can be reimbursed in money is, by definition, not irreparable.[5]

34. Reed Smith's prediction that the review will prove "wasteful no matter how the Second Circuit rules," Motion ¶ 22, also rests on a false dichotomy. The obligation to return the non-Vacatur business records of a company Reed Smith no longer represents exists now, under orders that are in effect and unstayed. The review Reed Smith wants to postpone will have to be done regardless of how the Second Circuit rules in the pending appeals. Postponing it serves only to extend the period during which Holdings is denied its records. And Reed Smith's forecast that Holdings "will then challenge Reed Smith's determinations," Motion ¶ 22, describes the ordinary operation of a privilege log, not an injury.[6]

C. The Harm Reed Smith Posits Is Speculative

35. Every version of Reed Smith's harm theory requires the Second Circuit to hold that the Plan never took effect and that the Debtors' former managers still control Holdings. That outcome is not "actual and imminent." *Grand River*, 481 F.3d at 66. No court has suggested it. Reed Smith itself told this Court that the Effective Date occurred. Dec. 16, 2024 Hr'g Tr. at 73:16–19. The District Court has held the Confirmation Order binding on the former shareholders and their counsel. And four months after the June 25 Order, the same Second Circuit panel referred to Holdings' owners as "the current owners of Eletson Holdings, Inc. (under the terms of the

[5] Holdings reserves the right to contest any request by Reed Smith for reimbursement. The point for present purposes is Reed Smith's own: it has told the Court that the cost it complains of is recoverable in money.

[6] The burden is also far smaller than Reed Smith portrays. Reed Smith has already done multiple reviews of this file in connection with various disputes, and has presumably tagged and categorized a material portion of the universe.

bankruptcy reorganization plan)." October 31 Second Circuit Order at 2. Harm that depends on a reversal no court has foreshadowed is remote and speculative, not actual and imminent.

D. The Second Circuit Rejected the Same Harm Argument in a Stronger Case

36. Finally, the Second Circuit's October 31 Order weighs against any finding of irreparable harm. There, in response to the same arguments Reed Smith raises here, the Second Circuit declined to stay production to Levona of documents maintained on the Eletson Microsoft server. Instead, the same panel that entered the June 25 Order found that Reed Smith had "not made a showing that an injunction or stay is justified." October 31 Second Circuit Order at 2.

II. REED SMITH HAS NOT SHOWN A LIKELIHOOD OF SUCCESS

37. Reed Smith must show that it is likely to obtain reversal of the Turnover Order in an appeal to the District Court. On that appeal, this Court's findings of fact will be reviewed for clear error and its conclusions of law de novo. *In re Ionosphere Clubs, Inc.*, 922 F.2d 984, 988–89 (2d Cir. 1990). The determinations on which the Turnover Order rests include this Court's findings that the documents sought are "categorically distinct" from the Vacatur Documents, that they relate to the Debtors' property and financial affairs, and that no genuine third party's confidentiality is implicated. Turnover Opinion at 8–11. Reed Smith does not identify any of those findings as clearly erroneous. Instead, it argues that the Second Circuit has "implicitly found" that there are serious questions going to the merits, and it bolsters that argument with its tired assertions that the Plan has not become effective and that this Court's holding conflicts with *Tekni-Plex* and other case law. Motion ¶¶ 24, 28. None of these propositions are correct.

A. The Second Circuit Has Not Ruled On This Issue

38. Reed Smith's assertion that the Second Circuit has already found that there are serious questions going to the merits is false. The June 25 Order granted the relevant stay motion

in a single sentence citing *Nken*. It gave no reasons and made no findings and nowhere mentioned the presence or absence of serious questions going to the merits of turnover.

39. Nor can any conclusions be drawn from that order by implication. Reed Smith's central argument is a syllogism: the Second Circuit applied the *Nken* factors to the District Court Turnover Order and granted a stay; the Turnover Order raises the same privilege and control questions; therefore the same result must follow here. Motion ¶¶ 5, 20, 24, 28. The Second Circuit has already rejected that conclusion. Reed Smith put exactly that syllogism to the panel on June 11, 2025, when it asked the panel not only to stay the District Court Turnover Order but also to stay all proceedings in this Court relating to "any privileged documents" of Eletson. Plan Confirmation Appeal, Dkt. No. 47.1 at 1. The panel granted the first request and refused the second in the same order. June 25 Order at 2–3. If the logic of the stay extended to every proceeding touching Eletson's privileged documents, the panel would have granted both requests. It did not. It drew the line at Judge Liman's order and directed this Court not to stop but to tailor.[7]

40. Applying the stay already in place to this Motion therefore yields a definite answer, and it is not the one Reed Smith proposes. The stay protects the property at issue in the District Court Turnover Appeal: the arbitration file. The Turnover Order gives that stay full effect. It excludes the Vacatur Documents and holds enforcement in abeyance as to them until the Second Circuit rules. Turnover Order ¶ 11. Every document the stay protects remains protected. What

[7] While one can only speculate as to the Second Circuit's reasons for ruling as it did in the June 25 Order, it is worth noting that there were multiple elements to the District Court Turnover Order that are not present here, including whether Reed Smith retained a lien over the materials. Without any commentary from the Second Circuit in the order, we have no way of knowing which issues they were focused on. What we do know is that the Second Circuit has refused Reed Smith's previous efforts to broaden its scope.

Reed Smith seeks is not *application* of the existing stay but its *extension* to documents the stay does not cover, which is the relief the panel declined on October 31, 2025.[8]

B. Reed Smith's Merits Arguments Are Destined to Fail

41. Reed Smith's actual merits arguments fare no better.

42. Reed Smith's first merits theory is that the Plan never fully took effect because it has not been recognized in Liberia and Greece. Motion ¶ 26. Every court to consider that argument has rejected it and affirmatively stated that the Plan went effective. *See, e.g.*, Dkt. No. 1402, Ex. A (Jan. 24, 2025 Hr'g Tr.) at 23:17-24, 26:5-11; February 14 Ruling at 89:6-90:15, 96:17-20, 97:6-13; Dkt. No. No. 1468, Ex. A (Feb. 20, 2025 Hr'g Tr.) at 97:14-98:13; Dkt. No. 1536, Ex. A (Mar. 12, 2025 Hr'g Tr.) at 57:1-14; *Eletson Holdings Inc. v. Levona Holdings Ltd.*, 2025 WL 2452351, at *3 (S.D.N.Y. Aug. 26, 2025) ("Reed Smith's representation of Holdings was terminated as a result of the Confirmation Order which became effective in November 2024 and was not appealed or stayed."); *In re Eletson Holdings Inc.*, 2025 WL 2710411, at *11 (S.D.N.Y. Sept. 22, 2025) ("As this Court has already found, as of the effective date and by order of the bankruptcy court, Eletson Holdings is now the reorganized Eletson Holdings, and there are not two separate Eletson Holdings.") (internal quotations omitted); Turnover Opinion at 9-10. An argument that has been rejected by this Court and the District Court no fewer than seven times is plainly not an argument that has a meaningful likelihood of success on appeal.

43. Reed Smith's second merits theory is that *Tekni-Plex, Inc. v. Meyner & Landis*, 89 N.Y.2d 123 (1996), prevents Holdings from obtaining privileged files because Holdings is "its client's former adversary." Motion ¶ 27. That argument has likewise been rejected by this Court

[8] Reed Smith notes that the Second Circuit ordered this Court to "tailor" its proceedings to "protect the privileged property at issue." Motion ¶ 24. Even if the "property at issue" were the same in each case (and it is not), this Court's Turnover Order was expressly tailored in nature, carving out the Vacatur Documents entirely.

and the District Court. *See* Turnover Opinion at 11-12; *Eletson Holdings Inc. v. Levona Holdings Ltd.*, 2025 WL 893686, at *14 (S.D.N.Y. Mar. 24, 2025) (concluding that *Tekni-Plex* "is not applicable here."); *see also* February 14 Ruling at 108:22-109:9. Beyond simple re-argument of its already-rejected positions, Reed Smith offers no reason to believe that it will prevail on appeal. *See, e.g.*, *Schwartz v. Dolan*, 159 F.R.D. 380, 384 (N.D.N.Y. 1995) ("Mere repetition of arguments previously considered and rejected cannot be characterized as a 'strong showing.'").

III. A STAY WOULD SUBSTANTIALLY INJURE HOLDINGS

44. Even if Reed Smith could establish some prospect of success on the merits – and it cannot – the balance of hardships weighs decisively against a stay. Holdings has been deprived of certain of its own books and records for twenty-two months. The Confirmation Order required cooperation in implementing the Plan. Reed Smith and the Debtors' former managers turned over nothing. Dkt. No. 2104 ¶ 23. Holdings has had to recover information about its own business through expensive and extraordinary efforts in multiple forums, in the face of persistent resistance from the former owners and Reed Smith.

45. The need for the files is concrete. Holdings is implementing the Plan and reconciling and resolving disputed claims. It must investigate and preserve the causes of action the Plan vested in it before limitations periods run, and it cannot evaluate claims without the documents on which they depend.[9] It must operate its business and oversee its subsidiaries, which requires knowing its contractual rights, obligations, counterparties, and liabilities. There may be contracts to which it is a party and which it is unknowingly failing to perform. Reed Smith's files, and those of the professionals Reed Smith brought into these cases, are the most complete record of the Debtors' financial affairs during the period in which those affairs were administered under

[9] For this reason (among others), the harm is far more than simply delay. *Contra* Motion at ¶ 31.

this Court's supervision. Every month without them is a month in which Holdings operates with an incomplete picture of its own obligations and rights.[10]

46. Reed Smith's assertion that Holdings has shown no urgency because of a "nearly two-year delay," Motion ¶¶ 6, 30, inverts the record. Holdings did not delay. It terminated Reed Smith effective on the Effective Date and demanded within eight days that Reed Smith stop acting for Eletson. February 14 Ruling at 106:13–20. It moved for Reed Smith's Eletson client file on January 7, 2025, seven weeks after the Effective Date, and won that motion on February 14, 2025. Vacatur Proceeding Dkt. Nos. 243, 269. When Reed Smith obtained a stay limited to the arbitration materials, Holdings pressed its right to the files in the Holdings Adversary Proceeding. When Reed Smith obtained a stay of discovery in that proceeding on August 3, 2026, Holdings filed the Turnover Motion eleven days later, confined to non-Vacatur documents. Throughout, the Plan and Confirmation Order themselves required turnover without any motion. Holdings sought the Turnover Order to give comfort to professionals whom Reed Smith and the former owners had sought to unsettle about the Plan's effect. Dkt. No. 2104 ¶ 1; Turnover Order ¶ 13. The time Reed Smith calls delay is the time during which Reed Smith has litigated against turnover in every available forum. A party cannot generate delay and then invoke it as a reason to deny relief.

47. The stay Reed Smith requests is not "brief," and the delay it would cause will not be "minimal." Motion ¶¶ 6, 31. By its terms the stay would last until the earlier of the conclusion of an appeal to the District Court that Reed Smith has not yet filed, or the conclusion of both Second Circuit appeals. Motion ¶ 1. Reed Smith tells this Court that those appeals are "fully

[10] Reed Smith's complaint that Holdings has not identified the particular documents it needs, Motion ¶ 30, is equally misplaced. An owner need not justify its need for its own property, and section 542(e) requires no showing that the information is necessary to administration of the estate. *See In re McKenzie*, 716 F.3d 404, 419 (6th Cir. 2013); Turnover Motion ¶ 12. Holdings cannot itemize documents it has never seen. The only party that knows what is in Reed Smith's files is Reed Smith.

briefed," that they are "ready for argument," and that the parties are "only awaiting argument and a decision." *Id.* ¶¶ 1, 31, 33. It does not tell the Court that the appeals were previously calendared for argument in September 2026, or that eight days before filing the Motion, Reed Smith moved to adjourn argument in the pending Second Circuit appeal. District Court Turnover Appeal, Dkt. No. 143. A party that has asked the Second Circuit to postpone argument cannot tell this Court that the Second Circuit's decision is imminent. It is not clear when the appeals will be decided, and their "conclusion" may encompass rehearing and further review.

48. In this regard, it is worth emphasizing that the Plan Confirmation Appeal pending before the Second Circuit (2d Cir. Case No. 25-176) does not actually address the merits of confirmation, but rather the discrete issue of whether the District Court should have dismissed Provisional Holdings' purported appeal of the Plan. Thus, if the Second Circuit determines that the dismissal was inappropriate, the result would be a remand for further proceedings before Judge Liman. In those circumstances, one can safely assume that Reed Smith would not willingly turn over the client files even though this Court's Confirmation Order would (as now) remain in full force and effect.

IV. THE PUBLIC INTEREST FAVORS DENIAL

49. The public interest favors the prompt implementation of confirmed plans and compliance with unstayed orders. *Maness v. Meyers*, 419 U.S. 449, 458 (1975); *see also, e.g.*, *In re Latam Airlines Grp., S.A.*, 643 B.R. 741, 755 (S.D.N.Y. 2002) ("The public interest lies in favor of consummation of the Plan."). A reorganized debtor cannot implement its plan, administer claims, or operate its business without its own records, and former estate professionals should not be permitted to keep those records from it by appealing and then seeking a stay on grounds already rejected.

50. The public interest in the attorney-client privilege points the same way. The privilege exists to encourage "full and frank communication" between clients and counsel. *Swidler & Berlin v. United States*, 524 U.S. 399, 403 (1998). That purpose is served by honoring the privilege holder's control, not by permitting former counsel to withhold the client's file from the client. *Weintraub*, 471 U.S. at 348–49. Reed Smith's position would mean that a corporation emerging from chapter 11 could never obtain its own legal files so long as prior management disputed the reorganization. That would turn the privilege into a weapon of displaced managers rather than a protection for the corporation.

51. There is no risk of inconsistent judgments. The Vacatur Documents are excluded from the Turnover Order, so no ruling by the Second Circuit about those documents can conflict with it. The deferral decisions Reed Smith cites, *Thai Lao Lignite (Thailand) Co. v. Government of Lao People's Democratic Republic*, 2013 WL 3970823, at *1 (S.D.N.Y. Aug. 2, 2013), *United States v. Romeo*, 136 F.4th 372 (2d Cir. 2025), and *In re Lehman Brothers Securities & ERISA Litigation*, 2012 WL 6584524, at *1 (S.D.N.Y. Dec. 18, 2012), concern courts that chose not to decide questions pending on appeal. This Court has already decided the question before it, after considering those same authorities when Reed Smith offered them in opposition. Reed Smith Opposition ¶ 28.

52. Reed Smith also invokes the Court's decision to defer ruling on Holdings' separate motion for sanctions, in which the Court observed that resolution of the appeals may "bring clarity on disputed issues." Motion ¶ 9 (quoting Dkt. No. 2119 at 19). But a decision not to rule on a pending motion is governed by an entirely different set of standards than a decision to stay a decision that has already been rendered. Moreover, a request for sanctions is different in kind. Caution about imposing sanctions while related appeals are pending says nothing about whether a

considered ruling that property must be returned should be suspended. The Court entered the Turnover Order with full knowledge of the pending appeals, which Reed Smith described at length in its opposition. Reed Smith Opposition ¶¶ 12–17.

V. THE ALTERNATIVE REQUEST FOR AN ADMINISTRATIVE STAY SHOULD BE DENIED

53. Reed Smith asks, in the alternative, for an administrative stay while it seeks relief from the District Court and the Second Circuit. The request should be denied. Reed Smith has had the Turnover Order since September 15, 2026 and waited a week to file the Motion. Paragraph 14 of the Turnover Order already defers Reed Smith's obligation until the appeal period expires or, if Reed Smith appeals, until it "has appealed but has not obtained a stay pending appeal." Once this Court rules, Bankruptcy Rule 8007(b) permits Reed Smith to seek a stay from the District Court immediately. An administrative stay would add nothing but further delay to the twenty-two months Holdings has already endured. If the Court is inclined to grant any interim relief, it should be limited to no more than seven days from entry of the order denying the Motion, conditioned on Reed Smith filing its motion in the District Court within three business days, and should lapse automatically if either condition is not met.

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CONCLUSION

54. For the foregoing reasons, Holdings respectfully requests that the Court (a) deny the Motion, (b) deny Reed Smith's alternative request for an administrative stay, and (c) grant such other and further relief as is just and proper.

Dated: September 25, 2026
New York, New York

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