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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 OPPOSITION TO APARGO LIMITED, FENTALON LIMITED, AND DESIMUSCO TRADING LIMITED'S MOTION FOR A PROTECTION ORDER/TO QUASH

[1] Prior to November 19, 2024, the Debtors in these cases were: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC. On March 5, 2025, the Court entered a final decree and order closing the chapter 11 cases of Eletson Finance (US) LLC and Agathonissos Finance LLC. Commencing on March 5, 2025, all motions, notices, and other pleadings relating to any of the Debtors shall be filed in the chapter 11 case of Eletson Holdings Inc. The Debtor's mailing address is c/o Herbert Smith Freehills Kramer (US) LLP, 1177 Avenue of the Americas, New York, New York 10036.

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Eletson Holdings Inc. ("Holdings"),[1] by and through its undersigned counsel, hereby submits this opposition (the "Objection") to the motion of Apargo Limited ("Apargo"), Fentalon Limited ("Fentalon"), and Desimusco Trading Limited ("Desimusco" and collectively with Apargo and Fentalon, the "Purported Nominees") for a protective order/to quash Holdings' Rule 2004 subpoenas [Dkt No. 1715] (the "Motion"). In support of this Objection, Holdings respectfully states as follows.

PRELIMINARY STATEMENT

1. Since the Effective Date, Holdings has been working tirelessly to gain control over its own assets. Part of that effort entails determining what those assets are, where they are located, and whether they are being compromised. But that has been impossible due to the contemptuous actions of Holdings' former insiders, equity holders, and their respective affiliates (the "Former Insiders").

2. Holdings needs to understand the extent of the Former Insiders' misconduct, what the Former Insiders have done with Holdings' property, and what other improper gambits the Former Insiders have planned or contemplated. The Purported Nominees have been instrumental to the Former Insiders' schemes. Though they plead their innocence and their so-called limited role,[2] this Court has recognized that the Purported Nominees are controlled and represented by the Former Insiders.[3] Judge Liman found this, too.[4] For that reason, it is reasonable to believe that the Purported Nominees possess relevant information concerning Holdings' assets, and the

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[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in *Eletson Holdings Inc.'s Ex Parte 2004 Application* [Dkt No. 1715-2].

[2] Mot. ¶22.

[3] *See In re Eletson Holdings Inc.*, No. 23-10322 (JPM), 2025 WL 2200761, at *8 (Bankr. S.D.N.Y. Aug. 1, 2025).

[4] *Eletson Holdings Inc. v. Levona Holdings Ltd.*, No. 23-CV-7331 (LJL), 2025 WL 1558380, at *4 (S.D.N.Y. June 2, 2025).

continuing misconduct of the Former Insiders to misappropriate those assets. They should be compelled to produce this information.

3. This Court has already found good cause for the requested discovery in granting Holdings' application to conduct Rule 2004 discovery on the Purported Nominees. Subsequent events have only reinforced that finding. As this Court recently held, the Purported Nominees are in contempt of this Court's Stay Relief Order (Dkt. No. 48) because they improperly changed the share registry of Eletson Gas. *See generally In re Eletson Holdings Inc.*, No. 23-10322 (JPM), 2025 WL 2200761 (Bankr. S.D.N.Y. Aug. 1, 2025). The Purported Nominees (incorrectly) thought that they were beyond the power of this Court and acted without regard for its authority. Thus, they are a good place to look for relevant information concerning the Former Insiders' scheme to obstruct the Plan.

4. As for the subpoenas at issue, the Purported Nominees have not even attempted to meet and confer with Holdings to discuss their scope. Instead, they are basically asking the Court to reconsider its approval of any Rule 2004 discovery. The Motion is thus procedurally improper. It is also based on meritless arguments, as set forth below. It should be denied.

BACKGROUND

I. The Rule 2004 Discovery Requests

5. On June 10, 2025, Holdings filed an *ex parte* application to conduct Rule 2004 discovery on, among others, the Purported Nominees (the "Rule 2004 Application"). [Dkt No. 1715-2]. The factual background contained in that application, which more than justified the discovery sought, is incorporated herein by reference.

6. On June 16, 2025, the Court approved the Rule 2004 Application and granted Holdings authority to issue Rule 2004 subpoenas on, *inter alia*, the Purported Nominees. [Dkt. No. 1698].

7. Shortly thereafter, Holdings served Rule 2004 subpoenas (in the form approved by the Court) on the Purported Nominees' counsel in this matter by FedEx and email (the "Subpoenas"). The Purported Nominees never requested to meet and confer regarding the Subpoenas, nor did they seek a pre-motion conference with the Court. Instead, on July 7, 2025, the Purported Nominees filed the Motion.

LEGAL STANDARD

8. "Rule 2004 discovery is broader than discovery under the Federal Rules of Civil Procedure, and . . . can be legitimately compared to a fishing expedition." *In re Drexel Burnham Lambert Grp., Inc.*, 123 B.R. 702, 711 (Bankr. S.D.N.Y. 1991). The party seeking information via a Rule 2004 subpoena need only demonstrate "good cause" for issuance of the subpoena. *E.g., ePlus, Inc., v. Katz (In re Metiom, Inc.),* 318 B.R. 263, 268 (S.D.N.Y. 2004). Good cause may be shown by demonstrating that the discovery sought is "necessary to establish the claim of the party seeking the examination, or if denial of such request would cause the examiner undue hardship or injustice." *Id.* (internal citations and quotation marks omitted).

9. Provided that the Rule 2004 examination is not designed to "abuse or harass" a third party, courts will generally allow it. *See In re Recoton Corp.,* 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004). Furthermore, it is the party challenging the Rule 2004 subpoena that must show how compliance would be oppressive or burdensome. *See, e.g., In re Vantage, Petroleum Corp.*, 34 B.R. 650, 652 (Bankr. E.D.N.Y. 1983).

ARGUMENT

A. THE MOTION IS PROCEDURALLY IMPROPER

10. As a threshold matter, because the Purported Nominees neither requested a meet-and-confer before filing the Motion nor sought a pre-motion conference, the Motion violates

your Honor's Chambers' Rules.[5] Meet-and-confer requirements are designed to help narrow disputes before motion practice. So while the Purported Nominees complain about the breadth of the Subpoenas, they failed to take any steps aimed at rectifying that alleged breadth. The Purported Nominees' disregard of this Court's procedures is alone grounds for denying the Motion. *See Jason Morgan Trucking, LLC v. Progressive Com. Ins.*, No. CIV-24-067-RAW-GLJ, 2025 WL 2062278, at *2 (E.D. Okla. July 23, 2025) (denying discovery motion for failing to comply with local rule requiring initial meet and confer).

B. THERE IS GOOD CAUSE FOR THE REQUESTED RULE 2004 DISCOVERY

11. The Purported Nominees concede that finding good cause for Rule 2004 discovery "lies withing the sound discretion of the Bankruptcy Court." Mot. ¶8. This Court has exercised that discretion by granting the Rule 2004 Application. It made that decision without considering the Purported Nominees' position on the motion, which was also within its discretion. *In re Toft*, 453 B.R. 186, 198 (Bankr. S.D.N.Y. 2011) (Rule 2004 examination can be commenced by an *ex parte* application); *see also Matter of Sutera*, 141 B.R. 539, 542 (Bankr. D. Conn. 1992) (Rule 2004 examinations are typically granted *ex parte*).

12. Even if considered, the Purported Nominees' argument (Mot. ¶3) that "Holdings cannot demonstrate 'good cause'" is incorrect. The purpose of Rule 2004 discovery "is to assist a party in interest in determining the nature and extent of the bankruptcy estate, revealing assets, examining transactions and assessing whether wrongdoing has occurred." *In re Recoton Corp.*, 307 B.R. at 755. Good cause may be shown by demonstrating that the discovery sought "is

[5] *See* Judge Mastando, Chambers' Rules, Discovery Disputes, available at https://www.nysb.uscourts.gov/content/judge-john-p-mastando-iii (last accessed August 12, 2025). As explained in the Local Bankruptcy Rules for the Southern District of New York, as amended on September 30, 2024, (the "Local Rules"), former local rule 7007-1 was renumbered in 2024 because discovery-related motion practice is more closely associated with Bankruptcy Rule 7037. *See* Local Rule 7037-1, Comment; *see also* Local Rule 9014-1 (providing that Local Rule 7037-1 applies in contested matters, unless the Court orders otherwise).

necessary to establish the claim of the party seeking the examination, or if denial of such request would cause the examiner undue hardship or injustice." *In re Metiom, Inc.*, 318 B.R. at 268 (citation and internal quotation marks omitted); *see also In re Gawker Media LLC*, No. 16-11700 (SMB), 2017 WL 2804870, at *6 (Bankr. S.D.N.Y. June 28, 2017) (allowing Rule 2004 discovery seeking to evaluate possible claims against a party).

13. Holdings plainly satisfies the good cause standard under Rule 2004. Holdings is empowered to fully effectuate the Plan. The Plan vested all the Debtors' estates and property, including interests held by the Debtors in their respective non-Debtor direct and indirect subsidiaries and affiliates, in Holdings. *See Findings of Fact, Conclusions of Law, and Order Confirming Petitioning Creditors' Amended Joint Chapter 11 Plan of Eletson Holdings Inc. and its Affiliated Debtors*, [Dkt No. 1223, ¶7]. Yet, the Former Insiders have misdirected Holdings' property.

14. As noted in the Rule 2004 Application, "it is clear that the Purported Nominees' actions raise serious questions as to whether they are working with Holdings' former officers, directors, and shareholders to further obstruct the Plan." Rule 2004 App. ¶15. Holdings has a reasonable basis to believe that the Purported Nominees have information concerning the Former Insiders' misconduct. Indeed, the Purported Nominees are investment vehicles for the benefit of those very parties.

15. Given the shell games that the Former Insiders have already played, Holdings has good cause to seek relevant information from all known entities controlled by them, including the Purported Nominees. According to the Purported Nominees, Holdings should seek information from different parties, but this does not change the fact that the Purported Nominees may have control over relevant information. In fact, it is appropriate to require the Purported

Nominees to produce information to prevent the Former Insiders from claiming that a different entity has control over the relevant documents, as they have done previously. *See* March 6, 2024, Hr'g Tr. [Dkt No. 461], 71:1-4 ("MR. BAKER: . . . What I understand the committee is asking for is essentially audit level information so they can audit the individual financial statements. Now, those records are not Holdings records. Those are individual entity records."); *see also id.* 71:17-71:25 ("THE COURT: Well, I wasn't just saying burden. I was asking the other question about control. . . [A]re you saying that it's not in the debtors' possession, custody, or control? MR. BAKER: Depending on what the information that is requested, it may not be under the debtors' custody and control, but . . . we would direct them to under whose control it would be.").

16. It is now apparent that the Purported Nominees are directly involved in the Former Insiders' scheme to obstruct the Plan. They chose to move for reconsideration of the March 25, 2025, sanctions order (Dkt Nos. 1586, 1587), even though they themselves had not been sanctioned. [Dkt Nos. 1537, 1589]. They chose to intervene in the Arbitration-related proceedings in front of Judge Liman long after Holdings, a claimant in the Arbitration, was taken over by Pach Shemen, an affiliate of Levona (the respondent), on the Effective Date. *See Eletson Holdings, Inc. v. Levona Holdings, LTD.*, 23-07331 (S.D.N.Y. April 7, 2025) [Dkt. No. 301]. The Purported Nominees also violated, and remain in violation of, the Stay Relief Order in this case when they improperly changed the Eletson Gas share registry, as this Court held on August 1, 2025. *See generally In re Eletson Holdings Inc.*, No. 23-10322 (JPM), 2025 WL 2200761 (Bankr. S.D.N.Y. Aug. 1, 2025). The Purported Nominees did this even though the Court received promises that all parties would respect the Stay Relief Order. *See, e.g.*, Feb. 27, 2024, Hr'g Tr. [Dkt No. 456], 53:14-16. They lied. The Purported Nominees cannot be trusted,

and their principals are the culprits. As Judge Liman stated when issuing his anti-suit injunction on June 2, 2025, "Laskarina Karastamati, Vassilis Kertsikoff, Vasilis Hadjieleftheriadis . . . are sufficiently 'in privity' with, in 'active concert' with, 'aiding,' or 'abetting'" the Purported Nominees. *Eletson Holdings, Inc. v. Levona Holdings, LTD.*, 23-07331 (S.D.N.Y. June 2, 2025) [Dkt No. 413 at 21].

17. Holdings has been trying to gain control of its assets for months, spending millions in the process on sanctions motions to stop the obstructionist tactics of the Former Insiders, who also happen to own and control the Purported Nominees. To say that Holdings has been prejudiced by the Former Insiders' misconduct would be an understatement. Holdings needs information about its assets and that is what the Rule 2004 discovery being sought is designed to accomplish. *See In re China Fishery Grp. Ltd.*, No. 16–11895 (JLG), 2017 WL 3084397, at *8 (Bankr. S.D.N.Y. July 19, 2017) (approving the trustee's request to conduct discovery under Rule 2004 for the purpose of investigating the debtor's assets). Holdings is also investigating potential claims against the Purported Nominees, for all of the above reasons. That is an independent basis for the requested discovery. *See Recoton Corp.*, 307 B.R. at 755-57.

18. Accordingly, there is good cause for the Subpoenas. *See In re 3 Kings Constr. Residential LLC*, No. 22-10965-PMB, 2024 WL 2264338, at *5 (Bankr. N.D. Ga. May 17, 2024) (good cause existed where Rule 2004 examination (a) targeted insiders already found in contempt due to their refusal to turn over the debtor's property, and (b) sought information concerning such insiders' unlawful transfer of estate assets); *see also In re Fearn*, 96 B.R. 135, 138 (Bankr. S.D. Ohio 1989) (finding that good cause existed for a Rule 2004 examination of the Debtors in connection with certain alleged fraudulent transfers).

C. THE RULE 2004 SUBPOENAS ARE NOT UNDULY BURDENSOME

19. Rather than explaining *why* or *how* the Subpoenas pose an undue burden, the Purported Nominees merely complain that they are too broad. Mot. ¶¶ 7-10, 17-23. This fails for three reasons. First, the information sought, comprised of 14 document requests, is tailored to Holdings' investigation of issues directly relevant to its own assets, *e.g.*, the Former Insiders' continual attempts to obstruct implementation of the Plan and block Holdings' access to such assets. [*See* Dkt. No. 1698]. Holdings is happy to meet and confer with the Purported Nominees regarding the breadth of those requests, as well as a reasonable set of document custodians and search terms. *See Pearson v. Trinklein*, No. 21-MC-770-ALC-JLC, 2022 WL 1315611, at *5 (S.D.N.Y. May 3, 2022) (directing parties to meet and confer about whether applying search terms to documents in a date range would result in an unduly burdensome number (*i.e.* an unreasonable volume) of documents to review); *see also In re Beltway L. Grp., LLP*, No. 14-00380, 2017 WL 394343, at *8 (Bankr. D.D.C. Jan. 27, 2017) (same).

20. Second, courts will authorize Rule 2004 discovery even when (unlike here) it is in the nature of a "fishing expeditions." *E.g., In re Parikh*, 397 B.R. 518, 525–26 (Bankr. E.D.N.Y. 2008) (rejecting argument that a broad Rule 2004 subpoena should be quashed because Rule 2004 examinations are entitled to be broad to expedite locating a debtor's assets). Here, the discovery is far from a fishing expedition, as Holdings has provided ample reason to believe that the Purported Nominees are in possession of information relevant to potential claims, and/or information that will reveal the location of its own misappropriated assets. Put another way, the Subpoenas could be much broader than they currently are and still survive the Motion.

21. Third, the target of Rule 2004 discovery has the burden of showing that complying with the discovery demands would be too difficult or costly. *See In re Vantage Petroleum Corp.*, 34 B.R. 650, 652 (Bankr.E.D.N.Y.1983) (motion to quash denied where, *inter*

alia, movants have not shown that such production would be oppressive or burdensome); *In re Roman Cath. Church of Diocese of Gallup*, 513 B.R. 761, 767 (Bankr. D.N.M. 2014) ("If the target of Rule 2004 discovery believes the request is unduly burdensome, it has the burden of showing that the burden is in fact undue."). The Purported Nominees have not even attempted to carry that burden. *See In re Cnty. of Orange*, 208 B.R. 117, 121 (Bankr. S.D.N.Y. 1997) ("The mere assertion that a subpoena is burdensome, without evidence to prove the claim, cannot form the basis for an 'undue burden' finding."); *Carusone v. Kane*, No. 1:16-CV-1944, 2019 WL 5424333, at *2 (M.D. Pa. Oct. 23, 2019) ("A party asserting an unduly burdensome objection to a discovery request has the burden to show facts justifying its objection by demonstrating that the time or expense involved in responding to requested discovery is unduly burdensome.").

22. Indeed, other than their conclusory statement that there are significant logistical burdens to travel from Greece for depositions in New York (Mot. ¶ 23), the Purported Nominees offer no basis to show that the Subpoenas are "more disruptive and costly to the [producing party] than beneficial to the [requesting party]."[6] *In re Texaco, Inc.*, 79 B.R. 551, 553 (Bankr. S.D.N.Y. 1987); *see also In re Madison Williams and Co., LLC*, No., 11–15896, 2014 WL 56070 (Bankr. S.D.N.Y. Jan. 7, 2004) (movants failed to carry their burden when they identified no particular harm and offered "little more than a ritual incantation that the Rule 2004 examination will impose undue burden").

23. Where, as here, a movant fails to show how compliance with a Rule 2004 subpoena would be unduly burdensome, the motion to quash must be denied. *See DoorDash, Inc. v. City of New York*, 754 F. Supp. 3d 556, 564–65 (S.D.N.Y. 2024) (movant must demonstrate an undue burden); *see also In re Vantage, Petroleum Corp.*, 34 B.R. at 652 (denying

[6] Apargo, Fentalon, and Desimusco must each, *individually*, demonstrate that the requests, *as to themselves*, is unduly burdensome. They have not done so.

motion to quash where movant failed to show undue burden, and connections between corporation and debtor indicated more than mere possibility that trustee would gain information concerning the debtor's financial affairs).

D. THE PENDING PROCEEDING RULE DOES NOT BAR THE RULE 2004 SUBPOENAS

24. The Purported Nominees' argument (Mot. ¶¶ 24-28) that the pending proceeding rule precludes the Subpoenas also fails. The purpose of the pending proceeding rule is to prevent parties from using the broad scope of Rule 2004 to circumvent the procedural safeguards of the Federal Rules of Civil Procedure. *See In re Glitnir Banki HF*, No. 08-14757 (SMB), 2011 WL 3652764, at *4 (Bankr. S.D.N.Y. Aug. 19, 2011). Rather than applying the rule rigidly, the court "holds the ultimate discretion whether to permit the use of Rule 2004, and courts have for various reasons done so despite the existence of a pending proceeding." *In re Int'l Fibercom, Inc.*, 283 B.R. 290, 292 (Bankr. D. Ariz. 2002).

25. The relevant inquiry here is whether Holdings' primary purpose in using Rule 2004 was to further administer the case or to aid in a pending litigation. *Cf In re Glitnir banki hf.*, No. 08-14757 SMB, 2011 WL 3652764, at *5 (Bankr. S.D.N.Y. Aug. 19, 2011) (pending proceeding rule did not prevent discovery because potential for unfairness was not present where there was no pending proceeding in which foreign representative could obtain discovery); *cf. In re Ramadan*, No. 11-02734-8-SWH, 2012 WL 1230272, at *3 (Bankr. E.D.N.C. Apr. 12, 2012) (applying the pending proceeding rule specifically because the state court litigant "crossed the line" by pursuing Rule 2004 discovery with the *intent* of circumventing the more stringent discovery rules). As explained above, it is clearly the former.

26. The Purported Nominees ask this Court to quash the Subpoenas because Holdings could have sought this discovery in front of Judge Liman. That is a red herring. Even if Holdings had done so, it is unlikely the Purported Nominees would have complied with their

discovery obligations. *See Eletson Holdings, Inc., v. Levona Holdings Ltd.*, S.D.N.Y., Case No. 23-cv-07331, Dkt Nos. 509, 510, 528. Indeed, despite judge Liman compelling Laskarina Karastamati and Vasilis Hadjieleftheriadis to appear in New York for depositions on July 25, 2025, and July 29, 2025, respectively, both Ms. Karastamati, as a representative of Fentalon, and Mr. Hadjieleftheriadis, as a representative of Desimusco, failed to appear for their depositions.

27. In pressing their pending proceeding rule argument, the Purported Nominees are the ones abusing the discovery rules. They advocate for a Kafkaesque scenario in which this Court quashes the Subpoenas because discovery could have occurred before Judge Liman. Meanwhile, the Purported Nominees have defied their discovery obligations in that proceeding.

28. Simply put, even if it overlaps with Arbitration issues in the Southern District of New York, the discovery sought in the Subpoenas concerns the Former Insiders' and the Purported Nominees' conduct *in this case*. The Purported Nominees and their principals have actively flouted this Court's authority and, in the process, caused Holdings to suffer economic harm. If not for their own, and the Former Insiders', misconduct, this examination would not be necessary. The Purported Nominees "should not be permitted to benefit from their intentional disregard of this Court's, or any court's orders." *In re Braxton*, No. 09-08876-8-RDD, 2014 WL 4178207, at *6 (Bankr. E.D.N.C. Aug. 21, 2014) (declining to apply pending proceeding rule where information overlapped with state court lawsuit because subpoenaed party willfully disregarded the court's order for a Rule 2004 exam). Even if the Court were to apply the pending proceeding rule to the Subpoenas (it should not), it should do so only with respect to those document requests that directly concern the Arbitration, and permit the rest of the Subpoenas to proceed.

CONCLUSION

For the foregoing reasons, Holdings respectfully requests that the Court deny the Motion in its entirety and grant such other and further relief as may be just and proper.

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