

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

THE WEINSTEIN COMPANY  
HOLDINGS LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-10601 (MFW)

(Jointly Administered)

**HARVEY WEINSTEIN'S EMERGENCY REQUEST FOR  
TELEPHONIC STATUS CONFERENCE PURSUANT TO 11 U.S.C. § 105(d)**

Harvey Weinstein, by and through his undersigned counsel, hereby requests (the “**Request**”) that the Court schedule an expedited telephonic status conference under 11 U.S.C. § 105(d) regarding the *Order Authorizing the Protocol for Production of Documents in Response to Harvey Weinstein's Motion Compelling Discovery Under Rule 2004 of the Federal Rules of Bankruptcy Procedure*, entered on June 5, 2018 [D.I. 976] (the “**2004 Order**”).<sup>2</sup> In support of this Request, Mr. Weinstein respectfully states as follows:

**JURISDICTION, VENUE AND PREDICATE**

1. The Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334(b). This is a core proceeding as that term is defined in 28 U.S.C. § 157(b)(2) and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012. Venue is proper under 28 U.S.C. §§1408 and 1409. The predicate for the relief requested is 11 U.S.C. § 105(d).

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<sup>1</sup> The last four digits of The Weinstein Company Holdings LLC’s federal tax identification number are (3837). The mailing address for The Weinstein Company Holdings LLC is 99 Hudson Street, 4th Floor, New York, New York 10013. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors and the last four digits of their federal tax identification is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <http://dm.epiq11.com/twc>.

<sup>2</sup> A copy of the 2004 Order is attached hereto as Exhibit A.

2. As required by Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware, Mr. Weinstein confirms his consent to the entry of a final order by the Court solely in connection with this Request to the extent it is later determined that the Court, absent consent of the relevant parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution

### **BACKGROUND**

3. On March 21, 2018 (the “**Petition Date**”), the above-captioned debtors and debtors-in-possession (the “**Debtors**”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On March 28, 2018, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors (the “**Committee**”).

4. On April 20, 2018, Mr. Weinstein filed his *Motion for Entry of an Order Compelling Limited Discovery Under Rule 2004 of the Federal Rules of Bankruptcy Procedure* [D.I. 275] (the “**2004 Motion**”), by which he requested production of, among other things, certain emails sent by the alleged victims to Mr. Weinstein during the time of his employment with the Debtors.

5. On May 8, 2018, the Court held a hearing at which it granted the 2004 Motion with respect to Mr. Weinstein’s e-mails. Subsequently, and following negotiations between Mr. Weinstein, the Debtors and the Committee, the 2004 Order was filed under certification of counsel and entered by the Court on June 5, 2018. Since the Court granted the 2004 Motion, the Debtors have produced some of the requested e-mails and production under the 2004 Order is ongoing.

6. Following the review by his counsel of the e-mails that have been produced to date, Mr. Weinstein now has an immediate need to file certain of the e-mails—less than 40 in number and redacted to remove all identifying information—in conjunction with his defense against a criminal indictment filed and pending in the Supreme Court of New York.

7. The emails are to be attached as exhibits to pre-trial motions—which must be filed in the Supreme Court of New York County no later than August 3, 2018—seeking a dismissal of the indictment for, among other reasons, the failure of the prosecutor to advise the grand jury of the substance of exculpatory communications made by the one of three complaining witnesses underlying the counts of the indictment and contained in the e-mails sought for use here.

8. It is Mr. Weinstein's belief that these e-mails are material and exculpatory and the failure of the district attorney to provide this evidence to the grand jury warrants a dismissal of the indictment.

9. In light of this need to file with the trial court a limited set of redacted e-mails of a single accuser in connection with his pending criminal cases and the requirement of paragraph 4 of the 2004 Order that the e-mails may only be filed publicly under further confidentiality and protective order agreed upon by Mr. Weinstein, the Debtors, and the Committee, Mr. Weinstein conferred with the Debtors and the Committee over a revised protective order that would permit his criminal counsel to publicly file a limited number of relevant and redacted e-mails relating to a single accuser in a filed criminal case.

10. While the Debtors agreed (through their counsel) to the proposed use of the e-mails in principal, the Committee's counsel indicated that, while they understood the basis of Mr. Weinstein's request, the Committee does not consent to the use of the e-mails without a

hearing before the Court, because Mr. Weinstein's use of those e-mails involves matters of substantive importance to the Committee's constituency of unsecured creditors.<sup>3</sup>

11. In light of the uncertainty of the Committee's position and the exigent need for the use of the e-mails in a filing that is due on August 3, 2018, Mr. Weinstein is now compelled to request an emergency status conference with the Court regarding the 2004 Order and the proposed modifications thereto.

### **REQUEST**

12. Pursuant to section 105(d) of the Bankruptcy Code, Mr. Weinstein respectfully requests that the Court schedule a status conference to address issues described above.

### **BASIS FOR REQUEST**

13. Section 105(d) of the Bankruptcy Code provides that "[t]he court, on its own motion or on the request of a party in interest (1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case." 11 U.S.C. § 105(d)(1). Section 105(d) goes on to provide that:

[The court] may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically . . .

11 U.S.C. § 105(d)(2).

14. The clear thrust of the 2004 Motion's request for e-mails was that the production of the e-mails was necessary in order to permit Mr. Weinstein to preserve his due process rights and to defend himself against the numerous accusations levied against him. The use of a limited

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<sup>3</sup> While one struggles to divine a basis for the Committee's assertion that Mr. Weinstein's use of material and exculpatory e-mails in connection with his efforts to dismiss his indictment involves matters of "substantive importance to the Committee's constituency of unsecured creditors," Mr. Weinstein notes that two of the five members of the Committee are alleged victims in certain civil actions unrelated to the criminal indictment filed and pending in the Supreme Court of New York and that the e-mails that are the subject of the 2004 Order have been produced to the Committee on an "Attorney's Eyes Only" basis.

set of the e-mails (redacted to protect identity and relating to only one accuser who is a complaining witness in a pending criminal indictment against Mr. Weinstein) is plainly within the scope the Court intended when it ordered production of e-mails under the 2004 Motion. Moreover, while the substance of the e-mails will be made in a public court filing, the particular accuser's name, e-mail address and any other personal information will be redacted or otherwise shielded from public view.

15. Thus, Mr. Weinstein requests that the Court hold an emergency status conference pursuant to section 105(d) of the Bankruptcy Code regarding his requested modifications to the 2004 Order and proposed public filing of a limited subset of the e-mails produced under the 2004 Order. Given the exigent timing of his need for the relief requested, Mr. Weinstein respectfully requests that the Court schedule the conference prior to 4:00 p.m. (ET) on Thursday, August 2, 2018.

**NOTICE**

16. Notice of this Request will be served via e-mail on (i) counsel to the Debtors; (ii) counsel to the Committee; and (iii) the Office of the United States Trustee. Mr. Weinstein submits that under the circumstances and in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of page intentionally left blank.]*

WHEREFORE, Mr. Weinstein respectfully requests that the Court (i) schedule a status conference at its earliest convenience, but not later than 4:00 p.m. (ET) on Thursday, August 2, 2018, to address the issues set forth above, and (ii) order such further relief as is just and proper.

Dated: August 1, 2018  
Wilmington, Delaware

**BAYARD, P.A.**

/s/ Daniel N. Brogan

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