IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In re: PANTHERA ENTERPRISES, LLC, Debtor.	Case Number: 2:19-BK-0787 Chapter 7

REPLY TO OBJECTIONS TO FIRST AND FINAL FEE APPLICATION OF BERNSTEIN-BURKLEY, P.C.

NOW COMES**,** BERNSTEIN-BURKLEY, P.C. ("Applicant"), and hereby files this Reply ("Reply") to the Objections filed by Panthera Training, LLC ("Training") and the Chapter 7 Trustee ("Trustee") (collectively, the "Objectors") to the First and Final Fee Application of Bernstein-Burkley, P.C. (the "Fee Application") and states the following:

A. <u>Introduction</u>

Applicant hesitates to give any credence to the Objections by filing anything of record in response thereto, but eventually determined it worth doing so in order to clarify several issues to the Court. Ultimately, the Objections are baseless and serve only to spout conjecture, speculation and a continuing misunderstanding and/or misrepresentation of these proceedings.

The Applicant served as Debtor's counsel in what eventually became one of many failed Chapter 11 bankruptcy cases seen by courts across the country. The Debtor was experiencing ongoing financial difficulties and an ever-growing dispute with its tenant and subcontractor, Training. Despite repeated requests for information and attempts to reconcile clear differences of opinion regarding the mechanics of the contracts between the parties, the disputes carried on and, in many ways, contributed to the filing of the bankruptcy. In addition, the Debtor's primary asset, its 750 acre real property training facility, was subject to imminent foreclosure by the Debtor's secured creditor. As evidenced by the proceedings and pleadings, the Debtor was engaged in various other disputes as well, all of which led to its need to seek the breathing spell of a bankruptcy and explore potential avenues for righting its ship. To be clear, the Debtor had a multitude of reasons for filing its Chapter 11 case. In the end, the Debtor was not able to resolve its primary problems and develop a plan that would allow for a successful exit from Chapter 11. The pleadings also reflect various actions taken by the Debtor during the proceedings that hampered its own ability to seek consensual resolutions with key parties.

These circumstances are not unique. Unfortunate yes, but not unique. The idea and/or suggestion that this case did not have a valid purpose or potential for resolution under the tools that the Bankruptcy Code provides is misplaced, wholly illogical and unsupported by any fact or law. Nevertheless, the Objectors assert various fanciful theories that fall squarely into the categories of misplaced and unsupported. The Objectors' complaints focus on two aspects of the case: 1) the litigation between the Debtor and Training (the "Adversary"); and 2) the Debtor's monthly operating reports. For a myriad of reasons, summarized herein and as reflected by the record of these proceedings, Applicant acted diligently and relied upon information provided by the Debtor in attempting to assist the Debtor in an effort to restructure is business and financial relationships and ultimately reorganize. The Objections should be overruled and the Applicant's Fee Application should be approved in its entirety.

B. <u>The Adversary Proceeding</u>

Without basis and completely contrary to the record and the actions and pleadings of Training, the Objectors allege that the Adversary was unwarranted. It is notable that Training never made these arguments in the actual Adversary proceeding. In fact, Training never moved to dismiss the allegedly "unwarranted" Adversary proceeding. Rather, it answered the Debtor's allegations, raised defenses, engaged in fact discovery, and made legal arguments concerning the contracts between the parties. That is litigation. It may very well have been that certain facts were discovered and defenses raised during the litigation that weighed in favor of Training. But those matters had to be borne out between the parties in the context of the Adversary.

There is no question that the commencement of the Adversary was in fact necessary in order to resolve various issues between the Debtor and Training and in order for the Debtor to gather certain information and documentation that Training refused to provide voluntarily. Ironically, the Objectors rely heavily on the financial reports of Training and the idea that those reports "vindicate" Training as to the dispute with the Debtor. But much of that information is the very information that Training refused to provide to the Debtor voluntarily. In particular, Training provided the Debtor with only Profit and Loss Statements, but refused to provide (or allow access to) any financial reporting to support the information contained on those P&L Statements. The P&L Statement were worthless to the Debtor without allowing the Debtor to review and analyze the financial transactions underlying the P&L Statements. The Trustee was given access to all of Training's financial information and was able to analyze that information in relation to Training's P&L Statements. That is an opportunity that the Debtor never had. Moreover, the need to perform that analysis was a key component of the Debtor's causes of action against Training.

The litigation was based primarily on a contract dispute arising from the Lease between the Debtor and Training. Frankly, the record will reflect that the Lease was poorly drafted in many respects, leading to multiple ambiguities and avenues for disputes. The parties had distinctly different interpretations of certain language in the Lease and how and when to apply it. To further complicate matters, the Debtor and Training were also parties to a Subcontract that governed their relationship and itself led to additional ambiguities and disputes. The Bankruptcy Court (Judge Flatley) certainly recognized the different interpretations that could be made under the Lease and Subcontract. The

Parties' disagreement on these issues and whether additional monies were owed under the Lease and/or Subcontract contributed significantly to commencement of the Adversary.

Applicant understands that the Trustee eventually came to the conclusion that no additional monies were owed to the Debtor by Training. However, that conclusion required not only a thorough analysis of Training's internal financial records, which Training refused to provide to the Debtor, but also required a legal conclusion regarding interpretation of the Lease and Subcontract. That is the legal opinion of the Trustee. Although the Trustee may now have his reasons for abandoning any causes of action against Training, that decision has no bearing on the Debtor's initial need to commence the Adversary in order to have these issues vetted and determined. Lastly, it is worth reiterating that Training could have at any time raised the arguments that it now attempts to raise regarding the "validity" of the litigation, but it never did so. Applicant would assert that is because Training knew and knows that any such arguments are baseless.

C. <u>Debtor's Operating Reports</u>

The Objectors' complaints about the Debtor's operating reports continue to be baffling. The Operating Reports were prepared by the Debtor, reflected what the Debtor's internal records reflected and show how the Debtor was accounting for various financial transactions. That is what monthly operating reports are supposed to do – they show the Debtor's financial transactions and how the Debtor is accounting for and characterizing those transactions. If the Objectors disagreed with how the Debtor was accounting for any transactions, it would have been productive for them to raise those concerns. As Applicant has pointed out numerous times, Training's counsel never brought its concerns to anyone's attention, particularly not to Applicant's attention. If Applicant had been made aware of such concerns, it could have questioned the Debtor regarding them and attempted to remedy any issues. To be sure, the Operating Reports reflect the information provided by the Debtor and Applicant's resulting understanding of how transactions between the Debtor and Training were to be accounted for, both by the Debtor and Training. To the extent that there were communications between the Debtor and Training inconsistent with that understanding, Applicant was not made aware of any such conversations, either by the Debtor or Training.

Importantly, when Applicant became aware (after the fact) of certain transfers that the Debtor's principals had made, Applicant instructed the Debtor's principals to correct such issues. This message was delivered by Applicant on numerous occasions, each time more strenuously than before. When Applicant was eventually made aware of additional issues and irregularities, which were only first disclosed to Applicant in the Motion to Dismiss proceedings, Applicant itself recommended that this case be converted so that a trustee could be appointed to investigate and oversee the Debtor.

To be sure, Applicant was operating with the information that the Debtor made available and expressly provided to Applicant. Again, when it became clear to Applicant that certain withheld information warranted serious consideration, Applicant recommended that this case be converted to a Chapter 7 and advised the Debtor to consent to the conversion. Applicant contacted the United States Trustee Office directly regarding these concerns and Applicant's recommendation for conversion.

WHEREFORE, based on the foregoing and the record in these proceedings, Applicant hereby respectfully requests that this Court overrule the Objections and approve Applicant's First and Final Fee Application, and to enter any further relief the Court deems just and appropriate.

Dated: December 14, 2020

Respectfully Submitted,

BERNSTEIN-BURKLEY, P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of December, 2020, a copy of the **REPLY TO OBJECTIONS TO APPLICANT'S FIRST AND FINAL FEE APPLICATION** was served via the CM/ECF system upon all parties and counsel of record.

Dated: December 14, 2020

Respectfully Submitted,

/s/ John J. Richardson