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

In re: **PANTHERA ENTERPRISES, LLC,** **Debtor**	**BK No. 2:19-bk-00787** **Chapter 7** **AP No.**
AARON C. AMORE, Chapter 7 Trustee, WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY, and PANTHERA TRAINING, LLC, **Plaintiffs** **v.** **TR&L, LLC, and SMI, LLC, THERESA MORGOGLIONE, JAMES PUNELLI, RAYMOND JONES, PANTHERA TRAINING CENTER LLC AND PANTHERA WORLDWIDE LLC,** **Defendants**	

COMPLAINT

Aaron A. Amore, Chapter 7 Trustee ("Trustee"), West Virginia Economic Development Authority ("WVEDA"), and Panthera Training, LLC ("Training"), by their respective counsel, file this Complaint to void certain pre-petition transfers made by the debtor Panthera Enterprises, LLC ("Debtor") and Panthera Training Center LLC, the Debtor's subsidiary, and to obtain declaratory relief as to the rights to certain personal property.

Jurisdiction and Venue

1. This Court has jurisdiction to hear this Complaint pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). This Court has supplemental jurisdiction under 28 U.S.C. § 1367 to hear the claims under West Virginia law as those claims are so related to the Bankruptcy Code claims that they form part of the same case or controversy. Plaintiffs consent to entry of a final order or judgment by this Bankruptcy Court.

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. This adversary proceeding is commenced pursuant to Rule 7001(2) of the Federal Rules of Bankruptcy Procedure, and 11 U.S.C. § 105(a). The Trustee seeks relief under 11 U.S.C. §§ 548. The Trustee, via 11 U.S.C. § 544(b), WVEDA and Training seek relief under W.Va. Code §§ 40-1A-1 *et seq*.

4. Declaratory relief is appropriate pursuant to Bankruptcy Rule 7001(9) and 28 U.S.C. §§ 2201 and 2202. An actual legal controversy exists regarding rights to certain real and personal property transferred by the Debtor and its related entities.

Parties

5. Plaintiff Aaron C. Amore is the Chapter 7 Trustee appointed for the bankruptcy estate of Panthera Enterprises, LLC, the Debtor herein.

6. Plaintiff WVEDA is a secured creditor of the Debtor, with a first priority lien against the Debtor's Property (as defined herein), including fixtures and rents.

7. Plaintiff Training is a Virginia limited liability company that leases the Debtor's Property and personal property pursuant to a Commercial Lease with the Debtor and is a subcontractor to the Debtor and Panthera Training Center, LLC, to provide certain training.

8. Defendant TR&L, LLC ("TR&L") is a Virginia limited liability company with its principal office address at 123 E. Main Street, 5th Floor, Charlottesville, VA 22902. Its agent for service of process is Timothy I. Kelsey, with an office address of 123 E. Main Street, 5th Floor, Charlottesville, VA 22902. On information and belief, TR&L is the successor in interest to SMI, LLC.

9. Defendant SMI, LLC ("SMI") is a Virginia limited liability company, registered with the Virginia State Corporation Commission as "active." Its principal office address is shown as 475 West Huntingdon Lane, Boyce, VA 22620. SMI's agent for service of process is John D. Schutte, 475 West Huntingdon Lane, PO Box 5, Boyce, VA 22620.

10. Defendant Theresa Morgoglione is an individual, believed to reside at or have an office at 218 W. Water St. #400, Charlottesville, VA 22902.

11. Defendant Panthera Training Center, LLC ("PTC") is a Delaware limited liability company. It is owned 80% by the Debtor and 20% by a private individual, which individual is not involved in the operations of the Debtor or PTC. PTC's agent for service of process is Agents and Corporations, Inc., 1201 Orange St., Suite 600, One Commerce Center, Wilmington, Delaware 19801.

12. Defendant Panthera Worldwide LLC ("Worldwide") is a Delaware limited liability company, and is a subsidiary of the Debtor. Its agent for service of process is Agents and Corporations, Inc., 1201 Orange St., Suite 600, One Commerce Center, Wilmington, Delaware 19801.

13. Defendant James Punelli ("Punelli") is an individual, with a last known address of 20214 Leier Place, Ashburn, Virginia 20147-3692. Punelli is a 50% owner of the Debtor. He

and Raymond Jones are both officers and managers of the Debtor (until conversion to Chapter 7), PTC, and Worldwide.

14. Defendant Raymond Jones ("Jones") is an individual, with a last known address of 43787 Bent Creek Terrace, Leesburg, Va 20176. Jones is a 50% owner of the Debtor. He and Punelli are both officers and managers of the Debtor (until conversion to Chapter 7), PTC and Worldwide.

Factual Background

15. Debtor initiated this bankruptcy case on September 13, 2019, with the filing of a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code.

16. The bankruptcy case was converted to a Chapter 7 proceeding by Order of the Court entered July 21, 2020. Aaron C. Amore ("Trustee") was appointed the Chapter 7 Trustee. ECF # 202.

17. Debtor holds title to approximately 748 acres in Hardy County, West Virginia ("Property"), which is the site of a security operations tactical training facility for personnel involved in military and non-military protective services ("Facility").

18. Debtor does not and never has operated the Facility, nor does Debtor provide any of the specialized training that is conducted at the Facility. Until June 1, 2018, the Facility was operated by the Debtor's subsidiary, PTC.

Loans made to the Debtor by the WVEDA

19. Prepetition, on August 21, 2013, WVEDA made a loan to the Debtor[1] in the original principal amount of $5,000,000 ("2013 Loan"). ECF # 52-2, pp. 44-47. The 2013 Loan financed a portion of the Debtor's cost to acquire the first 689.40 acres of the Debtor's Property.

20. The 2013 Loan is secured by a Credit Line Deed of Trust and Fixture Filing, granting WVEDA a first lien on the 689.40 acre tract acquired by the Debtor. ECF # 52-3, pp. 2-24. The 2013 Loan is also secured by a Collateral Assignment of Leases and Rents. ECF # 52-3, pp. 26-38.

21. WVEDA made a second loan to the Debtor on July 2, 2014, in the original principal amount of $1,871,505.00. ECF # 52-4, pp. 2-5. This loan financed the acquisition of the additional 58.09 acre tract adjacent to the 689.40 acre tract ("2014 Loan"). Proceeds of the 2014 Loan were also used to construct improvements and renovations on the Property.

22. The 2014 Loan is secured by a second Credit Line Deed of Trust and Fixture Filing, granting WVEDA a subordinate lien on the 689.40 acre tract and a first lien on the 58.09 acre tract. ECF # 52-4, pp. 7-25. It is also secured by a Collateral Assignment of Leases and Rents. ECF # 52-4, pp. 27-35. Together, the 2013 Loan and the 2014 Loan are referred to as the "EDA Loans," and the two Credit Line Deeds of Trust and Fixture Filings securing the EDA Loans are referred to as the "EDA Deeds of Trust."

23. WVEDA filed a claim in the Debtor's bankruptcy case for approximately $6.48 million. Claim 4.

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[1] The Debtor was formed in 2011 as TenX Group LLC. On or about December 19, 2016, the Debtor's name was changed to Panthera Enterprises LLC. However, the principals of the Debtor continued to use the name "TenX Group LLC" in certain documents.

Debtor's Default

24. Debtor first defaulted on the EDA Loans in February of 2015, by failing to make the monthly payments due under the terms of the respective promissory notes. The EDA Loans were brought current in May of 2015, but the Debtor defaulted again in August of 2015. Debtor made no payments on the EDA Loans in 2016.

25. On May 20, 2017, the Debtor and WVEDA entered into a modified payment arrangement whereby the Debtor agreed to pay $20,000 per month for each of the Loans. However, the Debtor defaulted on the modified payment arrangement, making just three (3) of the nine (9) payments that were to be paid between May 20, 2017 and February 28, 2018.

26. On February 28, 2018, WVEDA sent a notice of default and demand for payment to the Debtor and Guarantors, giving the obligors a deadline of March 31, 2018 to cure the default. The Debtor paid nothing, and in May of 2018, WVEDA commenced a foreclosure proceeding under the EDA Deeds of Trust.

27. Shortly after commencing foreclosure, Debtor advised WVEDA that it had entered into a Commercial Lease with Training, effective June 1, 2018, in addition to a Subcontract and an Agreement for assignment of all Debtor's contracts to Training. ECF # 52-6, pp. 10-64 (Commercial Lease); ECF # 52-7, pp. 7 - 29 (Subcontract); ECF # 52-7, pp. 2-5 (Agreement for assignment).

28. Recitals to the Commercial Lease and the Agreement for assignment state the Debtor is in default, that PTC is unable to operate the Facility in a manner that would allow payment of the rent required, and that Debtor sought out the arrangement with Training "in an effort to generate cash flow . . . to avoid an imminent foreclosure . . . and to possibly generate additional funds allowing it, and its subsidiary companies, to pay their creditors."

29. Thereafter, the Debtor, WVEDA, the Debtor's guarantors, and Training entered into a Forbearance Agreement, pursuant to which, among other things, the monthly rent payments due under the Commercial Lease were to be paid by Training directly to WVEDA, to be applied to the outstanding balances due and owing on the EDA Loans.

2018 Transfers to SMI

30. In the months following execution of the contracts with Training and the Forbearance Agreement, Training and WVEDA learned the Debtor had entered into a Timber Agreement, and a Bill of Sale with SMI (together, the "2018 Transfers").

31. In the time period prior to the 2018 transfers, the Debtor failed to make any significant debt service payments on its outstanding obligations. The obligations to creditors include, in addition to WVEDA, West Virginia Tax & Revenue, the Sheriff of Hardy County, West Virginia, Howard Shockey & Sons, Inc., West Virginia Paving, Inc., Unity Technologies Corporation, Brian Riso, Bruce Hardy, Azadian Group, LLC, Bill Neff Enterprises, Michael Cranston, CPA and Dinsmore & Shohl, LLP.

32. On information and belief, Roy Baker Duncan, II ("Duncan") is a member of SMI and/or TR&L. TR&L filed two proofs of claim in this bankruptcy case, showing Duncan as the Manager of TR&L and TR&L to be the successor to SMI. Claims 25, 26. The two claims are both for $529,199.

33. Duncan is also, on information and belief, a member/manager of Duncan Development Group, LLC, a Virginia limited liability company, whose agent for service of process is Timothy I. Kelsey. Duncan was employed by the Debtor beginning in or about August 5, 2013 through his member-managed Duncan Development Group, LLC. The employment continued through and until the Debtor and its subsidiary PTC ceased operations. Nonetheless, Duncan

Development Group, LLC filed a proof of claim for $379,231.20, asserting it continued to perform services for which it and Duncan are entitled to compensation up to the filing of the voluntary petition in September, 2019. Claim 24.

34. Based on the foregoing, Duncan is asserted to be an insider, and as such, the 2018 Transfers benefitted an insider of the Debtor.

35. On March 26, 2018, Debtor executed a Timber Agreement with SMI, pursuant to which the Debtor purportedly sold "[t]he exclusive rights to all merchantable timber standing or fallen on all . . ." of the Debtor's Property. This is the same Property that is subject to the EDA Deeds of Trust the Debtor granted the WVEDA in 2013 and 2014.

36. The term of the Timber Agreement is perpetual until the Debtor satisfies "all loan documents between TenX and its affiliates and SMI."

37. A Memorandum of the Timber Agreement was recorded in the Office of the County Commission of Hardy County on May 24, 2018. However, the Memorandum shows the Timber Agreement to be by and between TenX Group, LLC[2] and Theresa Morgoglione ("Morgoglione"). On information and belief, Morgoglione acquired the Timber Agreement from SMI. ECF # 52-11 (copy of recorded Memorandum and Timber Agreement).

38. The Timber Agreement states the consideration to be One Hundred Thousand Dollars ($100,000) cash in hand and other valuable consideration. This stated consideration is not a reasonably equivalent value for the substantive timber rights conveyed in a perpetuity agreement.

39. On information and belief, there was no consideration paid on March 26, 2018 for the Timber Agreement. Rather, on information and belief, the Timber Agreement was given to satisfy the collection efforts of SMI for a loan made to the Debtor in 2015.

[2] Notably, the Debtor changed its name to Panthera Enterprises, LLC two years prior, on or about December 19, 2016.

40. On June 15, 2018, Debtor, Punelli, Jones, PTC and Worldwide (together, "Seller") executed a Bill of Sale, pursuant to which they purportedly sold

> all of the Seller's rights, title and interest in the assets, inventory, vehicles, office equipment, furnishing, other equipment, munitions, firearms, and other personal property and equipment, . . . including but not limited to: All of Seller's equipment, furniture, fixtures, machinery, merchandise, firearms, vehicles, supplies and appliances, including, but not limited to, the specific items listed on the attached Schedule A.

ECF # 52-8, pp. 10-13.

41. The Schedule A attached to the Bill of Sale is believed to be the very same listing of tangible personal property that is attached as Exhibit B to the Commercial Lease the Debtor and PTC executed just fifteen (15) days *prior*, on June 1, 2018, leasing the very same property to Training. At the time the Commercial Lease was negotiated, the Debtor represented it owned the personal property identified in Exhibit B to the Commercial Lease, which Exhibit was prepared with the assistance of Duncan acting on behalf of the Debtor.

42. The Bill of Sale states the consideration to be One Dollar ($1.00) cash in hand. This is not a reasonably equivalent value given the substantive value of the personal property and the scope of property conveyed, purportedly not just by the Debtor but by all of its related entities, as well as Punelli and Jones. Upon information and belief, the Bill of Sale was also given to satisfy the collection efforts of SMI for loans made to the Debtor previously, in 2015, 2016, and 2017.

43. SMI failed to file the required assessor's forms to show that it owned the personal property purportedly conveyed on June 15, 2018. The personal property tax tickets remain in the name of PTC with tax obligations accruing, which are directly related to the personal property purportedly conveyed in the Bill of Sale. The claim of the Sheriff of Hardy County, West Virginia was $45,656.32 as of the filing of its proof of claim on October 28, 2019. This obligation continues to accrue.

Modular Units

44. On July 23, 2015, the Debtor and Bill V. Neff, Sr. ("Neff") executed a Contract of Sale, pursuant to which Neff sold to the Debtor 38 Modular Office Units ("Modular Units"). The Modular Units were already on the Property and used in the Facility on July 23, 2015 when the Contract of Sale was executed, having been placed there in 2009, before the Debtor acquired the Property.

45. Between 2009 and July 2015, the Modular Units were leased to the Debtor or its predecessor for use at the Facility. The Debtor's acquisition of the Modular Units in 2015 evidences the Debtor's intent to make the Modular Units a permanent part of the Property, i.e., an improvement and fixture to the Property.

46. After acquisition, on information belief, sometime between 2015 and 2016, the Modular Units became permanently attached to the Property. The Modular Unit's undercarriage sits on cinder blocks, which are set on concrete foundations, with the undercarriage affixed to the ground with metal straps. The metal straps are, in turn, attached to large augers drilled into the ground. The wheels that were attached to the undercarriages were removed upon installation. The Modular Units are now permanently connected to sewer and electrical services and a fresh water supply.

47. The Modular Units are not only attached to the Property, but in many cases they are tethered to each other. The Modular Units are reasonably necessary to and have been adapted or modified to the purpose for which the Property is being used, as a security operations tactical training facility. The modified Modular Units serve as, among other things, classrooms, specialized training rooms, a cafeteria and offices.

48. Accordingly, as fixtures to the Property, the Modular Units are part and parcel of the Debtor's realty.

49. The Debtor granted and conveyed to WVEDA the Property and "[a]ll fixtures, fixed assets and personalty of a permanent nature, owned by the Grantor [Debtor] now or at any time hereafter annexed, affixed or attached to the Property . . . hereby conveyed." ECF # 52-3, p. 3; ECF # 52-4, p. 8. Hence, the Modular Units are the WVEDA's collateral, securing the EDA Loans.

50. In addition, pursuant to the terms of the Commercial Lease executed June 1, 2018 by the Debtor, the Debtor leased to Training the "real property and the buildings, structures and other improvements and appurtenances thereon." Consequently, the Modular Units are also subject to the Commercial Lease given to Training. ECF # 52-6, pp. 10-64.

51. The Debtor scheduled the Modular Units as personal property of the Debtor, with an estimated value of $900,946.18, based upon the purchase price. ECF # 23, Schedule A/B, # 50.

52. Nonetheless, SMI or its successor, TR&L, has informally taken the position that the Modular Units were sold to SMI with the June 15, 2018 Bill of Sale, and therefore, are now the property of SMI/TR&L.

53. Neff also asserted, in adversary proceeding 20-ap-00010 filed in this bankruptcy case ("AP"), that he was the owner of the Modular Units. On November 4, 2020, this Court entered its Order and Memorandum Opinion, holding that "the Debtor owned the modular units at the time of filing, and the units are property of the Debtor's estate." 622 B.R. 201, 208 (Bankr. N.D. W.Va. 2020).

54. SMI was not a party to the AP. However, SMI had actual notice of the AP and did not intervene to protect its purported right as the owner of the Modular Units. Counsel for Neff, plaintiff in the AP, also appeared in this bankruptcy case as counsel for SMI. ECF # 52-5, pp. 3,

29 (transcript of 341 meeting); ECF # 97 (showing service of the AP to William J. Leon on behalf of Creditor SMI, LLC). Setting aside for the moment the fraudulent nature of the Bill of Sale, based on the foregoing, SMI should be estopped from making any claim to ownership of the Modular Units.

Further Default by the Debtor

55. The Timber Agreement and the Bill of Sale constituted further defaults by the Debtor under the EDA Loans and EDA Deeds of Trust.

56. In addition, in November, 2018, the 2017 tax liens for the delinquent real property taxes were auctioned by the Hardy County Sheriff and certified to the West Virginia State Auditor's Office for disposition, constituting another default.[3]

57. Consequently, in August, 2019, WVEDA once more commenced a foreclosure of the Property under the EDA Deeds of Trust. A foreclosure sale was scheduled and noticed for September 16, 2019. Debtor filed its voluntary petition on September 13, 2019.

COUNT I

DECLARATORY RELIEF

58. Plaintiffs reallege and incorporate by reference as though fully set forth herein paragraphs 1 through 57.

59. The competing claims against the Property, the personal property, and the Modular Units constitute an actual legal controversy that exists regarding the rights to real and personal property purportedly transferred by the Debtor and its related entities.

60. The competing claims against the Property, the personal property, and the Modular Units are impeding the Trustee's ability to administer this bankruptcy estate. Therefore, based

[3] Debtor redeemed the Property in 2020.

upon the allegations set forth herein, Plaintiffs seeks a judicial declaration, pursuant to 28 U.S.C. §§ 2201, 2202 and 11 U.S.C. § 105(a), that

a. the Timber Agreement and the rights granted thereunder are subject to the prior liens of WVEDA;

b. the purported sale of personal property of the Debtor, pursuant to the Bill of Sale, is subject to Training's rights to the personal property under the Commercial Lease with the Debtor;

c. the Modular Units are fixtures and part of the Debtor's real property, and therefore, despite the Debtor's purported sale of the Modular Units to SMI, the Modular Units are subject to the prior liens of WVEDA;

d. the purported sale of the Modular Units, pursuant to the Bill of Sale, is subject to the prior liens of WVEDA, and subject to Training's rights under the Commercial Lease.

COUNT II

Avoidance of Fraudulent Transfers Pursuant to 11 U.S.C. § 548 by Trustee and Recovery of the Debtor's Property Pursuant to 11 U.S.C. § 550

61. Trustee realleges and incorporates by reference as though fully set forth herein paragraphs 1 through 60.

62. The Debtor received less than reasonably equivalent value in exchange for the Timber Agreement and for the Bill of Sale.

63. The Debtor made the 2018 Transfers with actual intent to hinder, delay or defraud its creditors.

64. The Debtor was insolvent on the dates that the 2018 Transfers occurred or became insolvent as a result of the 2018 Transfers.

65. At the time of the 2018 Transfers, the Debtor already had debts that were beyond its ability to pay as such debts matured or came due.

66. On information and belief, the 2018 Transfers were made to and for the benefit of an insider and not in the ordinary course of business.

67. For the above reasons stated, the 2018 Transfers were fraudulent pursuant to 11 U.S.C. § 548.

68. SMI is the initial transferee and Morgoglione may be a subsequent transferee of the timber rights conveyed pursuant to the Timber Agreement. SMI is the initial transferee of the Debtor's personal property (including the Modular Units) conveyed pursuant to the Bill of Sale. Under 11 U.S.C. § 550, the Trustee may recover, for the benefit of the bankruptcy estate, such property transferred.

69. Accordingly, the Trustee seeks an order of this Court (i) avoiding the fraudulent 2018 Transfers pursuant to 11 U.S.C. § 548, (ii) returning to the bankruptcy estate, pursuant to 11 U.S.C. § 550, the timber rights and the Debtor's personal property that was conveyed, and (iii) awarding the Trustee such other and further relief as the Court deems appropriate.

COUNT III

Avoidance of Fraudulent Transfers Pursuant to 11 U.S.C. § 544(b) and W.Va. Code § 40-1A-4, and Recovery of the Debtor's Property Pursuant to 11 U.S.C. § 550

70. Plaintiffs reallege and incorporate by reference as though fully set forth herein paragraphs 1 through 69.

71. The Debtor made the 2018 Transfers with actual intent to hinder, delay or defraud its creditors. The 2018 Transfers devalued the collateral pledged to the WVEDA and violated the covenants contained in the EDA's Deeds of Trust. The Bill of Sale defrauded Training by purportedly conveying personal property that was already leased to Training.

72. The Debtor received less than reasonably equivalent value in exchange for the 2018 Transfers.

73. On the date of the 2018 Transfers, the Debtor already had debts that were beyond its ability to pay as such debts became due.

74. On information and belief, the 2018 Transfers were made to and for the benefit of an insider and not in the ordinary course of business.

75. For the above reasons stated, the 2018 Transfers were fraudulent pursuant to W.Va. Code § 40-1A-4.

76. SMI is the initial transferee and Morgoglione may be a subsequent transferee of the timber rights conveyed pursuant to the Timber Agreement. SMI is the initial transferee of the Debtor's personal property (including the Modular Units) conveyed pursuant to the Bill of Sale. Under 11 U.S.C. § 550, the Trustee may recover, for the benefit of the bankruptcy estate, such property transferred.

77. Accordingly, Plaintiffs seek an order of this Court (i) avoiding the fraudulent 2018 Transfers pursuant to 11 U.S.C. § 544(b) and W.Va. Code § 40-1A-4, (ii) returning to the bankruptcy estate, pursuant to 11 U.S.C. § 550, the timber rights and the Debtor's personal property that was conveyed, and (iii) awarding the Trustee such other and further relief as the Court deems appropriate, including any and all remedies available under W.Va. Code § 40-1A-7.

COUNT IV

Avoidance of Fraudulent Transfers Pursuant to 11 U.S.C. § 544(b) and W.Va. Code § 40-1A-5, and Recovery of the Debtor's Property Pursuant to 11 U.S.C. § 550

78. Plaintiffs reallege and incorporate by reference as though fully set forth herein paragraphs 1 through 77.

79. The Debtor made the 2018 Transfers without receiving a reasonably equivalent value in exchange for the 2018 Transfers.

80. The Debtor was insolvent on the date of each of the 2018 Transfers or was rendered insolvent as a result of each of the 2018 Transfers.

81. On information and belief, the 2018 Transfers were made to and for the benefit of an insider for an antecedent debt, which insider had reasonable cause to believe the Debtor was insolvent.

82. For the above reasons stated, the 2018 Transfers were fraudulent pursuant to W.Va. Code § 40-1A-5.

83. SMI is the initial transferee and Morgoglione may be a subsequent transferee of the timber rights conveyed pursuant to the Timber Agreement. SMI is the initial transferee of the Debtor's personal property (including the Modular Units) conveyed pursuant to the Bill of Sale. Under 11 U.S.C. § 550, the Trustee may recover, for the benefit of the bankruptcy estate, such property transferred.

84. Accordingly, Plaintiffs seek an order of this Court (i) avoiding the fraudulent 2018 Transfers pursuant to 11 U.S.C. § 544(b) and W.Va. Code § 40-1A-5, (ii) returning to the bankruptcy estate, pursuant to 11 U.S.C. § 550, the timber rights and the Debtor's personal property that was conveyed, and (iii) awarding the Trustee such other and further relief as the Court deems appropriate, including any and all remedies available under W.Va. Code § 40-1A-7.

Prayer for Relief

WHEREFORE, Aaron A. Amore, Chapter 7 Trustee, West Virginia Economic Development Authority, and Panthera Training, LLC, respectfully request that the Court:

(1) issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that the Timber Agreement and the rights granted thereunder are subject to the prior liens of WVEDA;

(2) issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that the purported sale of personal property of the Debtor, pursuant to the Bill of Sale, is subject to Training's rights to the personal property under the Commercial Lease with the Debtor;

(3) issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that the Modular Units are fixtures and part of the Debtor's real property, and therefore, despite the Debtor's purported sale of the Modular Units to SMI, the Modular Units are subject to the prior liens of the EDA;

(4) issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that the purported sale of the Modular Units, pursuant to the Bill of Sale, is subject to the prior liens of WVEDA, and subject to Training's rights under the Commercial Lease.

(5) enter an order pursuant to 11 U.S.C. § 548 voiding the Timber Agreement and the Bill of Sale and returning to the bankruptcy estate, pursuant to 11 U.S.C. § 550, the timber rights and the Debtor's personal property that was conveyed;

(6) alternatively, enter an order pursuant to 11 U.S.C. § 544(b) and W.Va. Code § 40-1A-4 voiding the Timber Agreement and the Bill of Sale and returning to the bankruptcy estate, pursuant to 11 U.S.C. § 550, the timber rights and the Debtor's personal property that was conveyed;

(7) alternatively, enter an order pursuant to 11 U.S.C. § 544(b) and W.Va. Code § 40-1A-5 voiding the Timber Agreement and the Bill of Sale returning to the bankruptcy estate, pursuant to 11 U.S.C. § 550, the timber rights and the Debtor's personal property that was conveyed; and

(8) grant such other and further relief as the Court deems appropriate.

Dated: February 12, 2021

Respectfully submitted,

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