UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

PANTHERA ENTERPRISES, LLC **Case No. 19-00787**

Debtor. **Chapter 7**

MOTION TO COMPROMISE OBJECTIONS OF TRUSTEE AND PANTHERA TRAINING, LLC TO APPLICATION FOR FINAL COMPENSATION AND REIMBURSEMENT OF EXPENSES BY BERNSTEIN-BURKLEY, P.C, COUNSEL FOR THE CHAPTER 11 DEBTOR, PANTHERA ENTERPRISES, LLC

Now comes Aaron C. Amore, Trustee for the Bankruptcy Estate of Panthera Enterprises, LLC, and moves the Court for approval of a compromise and settlement of certain claims related to the First and Final Compensation And Reimbursement of Expenses By Bernstein-Burkley, P.C, (hereafter "Applicant") counsel for the Chapter 11 Debtor, Panthera Enterprises, LLC and objections thereto by the Trustee and Panthera Training, LLC.

Proposal to Resolve Application and Objections:

The Trustee and the U.S. Trustee agreed on the compromised proposal that a Fifty (50%) percent reduction of the total application request was acceptable with the balance being treated as a general unsecured claim. Panthera Training LLC does not object to the proposal and defers to the Trustee and U.S. Trustee in this regard. Bernstein-Burkley, P.C. will be allowed an administrative claim in the amount of $131,994.10 and a general unsecured claim in the amount of $131,994.11

LEGAL STANDARD

Request for Attorney's Fees:

A Bankruptcy Court "may allow reasonable compensation to the Debtor's attorney for representing the interests of the Debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the Debtor and the other factors set forth in this section." 11 U.S.C. § 330(a)(4)(B). The "other factors" include those set forth in § 330(a)(3):

> (A) the time spent on such services;
>
> (B) the rates charged for such services;
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> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of [the case];
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
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> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
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> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title. 11 U.S.C. § 330(a)(3).

In addition to these considerations, the Fourth Circuit has instructed Bankruptcy Courts to evaluate fee applications in light of the following twelve factors (the "Johnson factors"): (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases. *Harman v. Levin*, 772 F.2d 1150, 1152 n.1 (4th Cir. 1985) (citing Barber, 577 F.2d at 226 n.28, and *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)).

Standard on Motion to Compromise:

A decision to compromise a claim is also reviewed under the business judgment test. E.g., *In re OptInRealBig.com, LLC*, 345 B.R. 277, 292 (Bankr. D. Colo. 2006) ("Where an application under Rule 9019 is appropriate, the Court's job is to determine whether a given settlement is fair and equitable to the Estate. In making its determination, the Court gives some deference to the business judgment of the debtor-in-possession"). A review of that business judgment generally turns on the outcome of four factors: (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors. *Fry's Metals, Inc. v. Gibbons* (*In re RFE Industries, Inc.*), 283 F.3d 159, 165 (3rd Cir. 2003). See also *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson,* 390 U.S. 414, 424-25 (1968) (same); *Drexel v. Loomis,* 35 F.2d 800, 806 (8th Cir. 1929) (same). A compromise of claims under Rule 9019 serves the purpose of binding the Bankruptcy Estate and the creditor to the terms of the bargain struck by the parties. *OptInRealBig.com*, 345 B.R. at 291

<u>Facts Relevant to Inquiry</u>

1. Panthera Enterprises, LLC ("Debtor" or "Panthera") filed a Chapter 11 Voluntary Bankruptcy Petition on September 13, 2019.
2. On September 23, 2019, Bernstein-Burkley filed an Application for Employment as Counsel to the Debtor with this Honorable Court and was employed pursuant to the entry of the Order of Court dated October 10, 2019.
3. On July 21, 2020, by Order of Court, this matter was converted from Chapter 11 to Chapter 7 and Aaron C. Amore was appointed as the panel Trustee assigned to the case.
4. On October 19, 2020 Applicant filed Final Application for Compensation and Reimbursement of Expenses (hereafter "Application").
5. Panthera Training, LLC and the Trustee objected to the Application.
6. The Court conducted an initial review of the pleadings and requested the parties engage in an informal discussion at the suggestion of the Assistant

United States Trustee who agreed to facilitate such a meeting.

7. Panthera Training, LLC moved for an award of sanctions against the law firm of Bernstein-Burkley, P.C. for what it asserts were baseless claims that lead to the filing and pursuit of the adversary proceeding case 19-ap-51. ("Panthera Training's Motion").
8. Bernstein-Burkley, P.C. responded in opposition to this motion.
9. The parties to these pleadings held a telephonic conference on February 19, 2021 with Gary O. Kinder, Assistant United States Trustee hosting.
10. The parties were able to negotiate the outline of a settlement of the fees to be paid pursuant to the Application which was formalized through telephonic and email communications thereafter.
11. The Court conducted a hearing on February 25, 2021 wherein it heard arguments in support of the compromised agreement on the Application and Panthera Training's Motion for attorney's fees and costs.
12. The Court was advised of the general settlement terms and set a hearing to take up the matter but reserved the right to enter an order if no objections were filed.
13. The Trustee obtained the legal file of Bernstein-Burkley, P.C. to review the substantive work claimed in its Application. The Trustee reviewed documents, email communications, notes and documents provided to counsel in the course of the representation of the Debtor entity.

Position and Assessment of Trustee and Review of Legal Standard:

The Debtor filed in the eve of a foreclosure sale which prevented the normal and customary bankruptcy planning that is often critical in assessing the appropriateness and viability of a chapter 11 filing. The principals of the Debtor entity had constructed a maze of related and unrelated legal entities with multiple name changes (both formal and informal) that created confusions. There are multiple agreements entered into by one or more entities or jointly with some or all entities. The funds were loaned to one entity but deposited directly to another entity. The books were kept on separate chart of accounts but in one primary program which allowed for the shifting of funds, debts and other accounting entries that makes this case very difficult to sort through. The Trustee is still unwinding information to correct tax returns and to determine what entity owes what debts.

The principals of the Debtor entity purposefully created the maze of legal entities to move money, ownership of assets and payments to facilitate their personal needs. The Debtor entity and its related companies (Panther Training Center, LLC and Panthera WorldWide, LLC) borrowed large sums of money that they could not repay. At the inception of the chapter 11 the Debtor lacked the ability to pay its debts and even to maintain the bare minimum operating costs related to the payment of taxes and insurance for the property, this despite an agreement that Panthera Training, LLC would pay the debt obligation to West Virginia Economic Development Authority ("WVEDA"). The real estate owned by the Debtor was over-encumbered by debt and a sale was an unlikely option, especially given the obligations of the Debtor set forth in the long-term lease, assignment and subcontract agreements that further encumbered a sale of the property and impacted the property's value to be realized from such a sale.

The Debtor's principals' strategy early on appears to have been to move debt off the books (reclassify debt as an equity contribution) and to seek to remove the restrictive lease that devalued a sale of the property. To this end, the Debtor's primary focus became the adversary proceeding against Panthera Training, LLC. The Trustee is of the opinion that this adversary was a baseless proceeding and that many, if not all, of the claims could have been resolved prior to the filing of the suit. The Debtor had the ability to seek to use cash collateral to hire an expert to conduct an audit (as was its right under the lease) to further investigate the claims that rent was not being properly calculated and paid per the lease. This action, along the attempt to eject Panthera Training, LLC and the related defense of motions to convert or dismiss by WVEDA constituted a substantial amount of the time expended and represented on the Application.

Conclusion:

The complexity of this Debtor and its related entities are certainly factors the Trustee has considered in arriving at the compromise. The Debtor and its related entities were conducting no real business and were simply acting as pass-through conduits pursuant to the lease and subcontracts with Panthera Training, LLC. The legal issues presented were not significant at the inception of the case and the income of the Debtor and its ability to fund a plan were negligible at the outset.

The Trustee and the U.S. Trustee agreed on the compromised proposal that a Fifty (50%) percent reduction of the total Application request was acceptable with the balance being treated as a general unsecured claim. The Trustee believes that a sale of the property of the Debtor is possible, despite the limitations placed on the property by the lease agreement. Such a sale would bring funds into the Estate for a portion of the payment of administrative claims, priority claims and a limited return to the unsecured creditors. This return to the unsecured creditors is not likely to be significant given the large number of claims and total debt in this unsecured class. In addition, a sale would likely strip off junior lien holders which would then be added to the general unsecured creditor class. At the end of the day, the return to Bernstein-Burkley, P.C. as an unsecured creditor is not going to be significant.

(**A) the time spent on such services**; The Trustee if of the opinion that Thirty (30%) percent of the legal work done in this case truly benefitted the Debtor but has agreed to the compromise as it balances total claim for fees and costs with what would be considered as normal and customary for such time and taking into consideration the complexity of this Debtor and its related entities. The Trustee is also cognizant that the principals may have provided false or skewed information that created additional time expenditures.

(B) the rates charged for such services; The Trustee does not believe the rates charged by the Applicant are excessive.

(**C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of [the case];** The Trustee is of the opinion that the Applicant substantially failed to provide services that were necessary to the administration or beneficial at the time rendered toward a successful completion of the case.

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; The Trustee believes the actions of the Debtor, furthered by the Applicant lead to many of the contested issues that should have been resolved or avoided at the initiation of the case.

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; Trustee is unaware of board certification of any of the attorneys as the application fails to note. The Trustee is aware that the Applicant firm has filed several Chapter 11 cases.

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title. 11 U.S.C. § 330(a)(3). The Trustee believes the compromise represents a negotiated agreement that puts the total fees and costs requested within the range of normal and customary fees charged in such cases.

Wherefore, the Trustee prays this Court grants this Motion to Compromise the Application for Final Compensation And Reimbursement of Expenses By Bernstein-Burkley, P.C, and grant further relief as this Court deems just and necessary.

Aaron C. Amore, Trustee
Panthera Enterprises, LLC
By counsel

/s/ Aaron C. Amore
Aaron C. Amore, Esq. WVSB# 6455
AMORE LAW, PLLC
206 West Liberty Street
P.O. Box 386
Charles Town, WV 25414
Telephone: (304) 885-4111
Facsimile: (866) 417-8796
E-mail: aaron@amorelaw.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Compromise **Objections of Trustee and Panthera Training, LLC to Application for Final Compensation And Reimbursement of Expenses By Bernstein-Burkley, P.C**, Counsel for the Chapter 11 Debtor Panthera Enterprises, LLC was served upon the following individuals at the addresses listed below, via CM/ECF and/or email on this 3rd day of March 2021 to the following:

Via Email:
Kelly T. Smith ksmith@sek.com
Jack Lantzy jlantzy@sek.com
Mark A. Lindsay mlindsay@bernsteinlaw.com
Rob Duncan tarpon777@yahoo.com
Rob Duncan as manager of TR&L tkelsey@woodsrogers.com
Bruce & Stacie Hardy bsrhardy@comcast.net

CM/ECF
Debra Lee Allen dallen@spilmanlaw.com
Aaron C. Amore aaron@amorelaw.com, jackie@amorelaw.com;c.ar70274@notify.bestcase.com;alaina@amorelaw.com Aaron C. Amore amorewvt@gmail.com, aca@trustesolutions.net;jackiewvt@gmail.com;annwvt@gmail.com
Robert S. Bernstein rbernstein@bernsteinlaw.com, cwirick@bernsteinlaw.com;cwirick@ecf.courtdrive.com;rbernstein@ecf.courtdrive.com
Elizabeth B. Carroll elizabeth_carroll@vawb.uscourts.gov
Julia A. Chincheck jchincheck@bowlesrice.com
Spencer D. Elliott selliott@lgcr.com
Douglas Kahle dkahle@basnightkinser.com
Gary O. Kinder gary.o.kinder@usdoj.gov
Travis Alan Knobbe tknobbe@spilmanlaw.com, dambrose@spilmanlaw.com
Sabrina B. Lee sabrina_lee@vawb.uscourts.gov
William J. Leon jayleon@comcast.net
Salene Rae Mazur Kraemer skraemer@bernsteinlaw.com, salene@ecf.courtdrive.com,
John J. Richardson jrichardson@bernsteinlaw.com
Zachary James Rosencrance zrosencrance@bowlesrice.com,

ajones@bowlesrice.com
Anita M. Swaton Anita_Swaton@wvnb.uscourts.gov
United States Trustee ustpregion04.ct.ecf@usdoj.gov
Eric Michael Wilson eric.m.wilson@wv.gov, lora.l.rutledge@wv.gov

Manual Notice List

Notice was not mailed to the parties below as no addresses were provided. To the extent the Trustee has email addresses the below notice parties, they were emailed.

Rob Duncan
Manager/Duncan Development Group, LLC
Rob Duncan
Manager/TR&L, LLC,
a Virginia Limited Liability Company
Successor to SMI, LLC,
a Virginia Limited Liability Company

Bruce Hardy
Stacie Hardy
Anthony McIntyre
Timothy Miller

/s/ Aaron C. Amore
Aaron C. Amore, Esq.