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

In re:

PANTHERA ENTERPRISES, LLC, **Chapter 7**

Debtor. **BK No. 2:19-bk-00787**

RESPONSE OF SMI, LLC, TR&L, LLC, AND ROY BAKER DUNCAN II TO OBJECTION OF TRUSTEE TO PROOF OF CLAIM NO. 5 FILED BY THE SHERIFF OF HARDY COUNTY

COME NOW SMI, LLC ("SMI"), TR&L, LLC ("TRI"), and Roy Baker Duncan, II (aka Rob Duncan) ("Duncan"), by and through counsel, Kathy M. Santa Barbara, Esquire and The Law Office of Kathy M. Santa Barbara, PLLC, and hereby responds to the Objection of Trustee to Proof of Claim No. 5 Filed by the Sheriff of Hardy County [Doc. 390] (the "Objection") for the purpose of clarifying certain averments made by the Trustee therein of which the following is a statement:

1. The Sheriff of Hardy County (the "Sheriff") filed Proof of Claim No. 5 (the "POC") in which he claims to be a priority creditor of Panthera Enterprises, LLC (the "Debtor") on account of personal property taxes due and owing to him for the tax years 2016 through 2019, inclusive.

2. The Trustee avers that for the tax years 2016 and 2017, the taxpayer would have been Panthera Training Center, LLC ("PTC") or Duncan.

3. Although the Trustee avers that Panthera Training, LLC possessed the personal property prior to the assessment deadline for 2018 personal property taxes and that the taxpayer for the 2018 taxes was PTC and/or James Punelli, he further avers that the personal property was owned by SMI at that time. The Trustee further avers that for the year 2019 Panthera Training, LLC possessed the personal property.

4. Duncan never owned nor did he ever possess the personal property, the taxation of which is the subject of the Trustee's Objection. Duncan was simply an employee of the Debtor and/or the Debtor's predecessor in whose care the personal property tax invoices showing assessment of taxes against PTC, a separate entity from the Debtor, were mailed by the Sheriff at the address used by the Debtor and PTC for such purpose.

5. In this bankruptcy proceeding, a claim by TR&L, by virtue of an assignment from SMI, that it was the owner of, or secured creditor collateralized by, certain personal property was disputed by the Trustee, by Panthera Training, LLC, and by the West Virginia Economic Development Authority and was the subject of Adversary Proceeding No. 2:21-ap-00002. All claims in that adversary proceeding were fully settled and resolved pursuant to a Stipulation of Dismissal and Consent Order [Doc. 39] filed in that proceeding. There has been no determination at any time that SMI, or by assignment, TR&L, ever owned the personal property which is the subject of the Sheriff's POC. At no time did SMI or TR&L ever possess any personal property which is the subject of the Sheriff's POC.

6. Neither Duncan, SMI or TR&L are subject to taxation for the personal property taxes claimed to be owed by the Debtor in the Sheriff's POC pursuant to W.Va. Code §§ 11-3-1(c), 11-3-1(f)(4), nor 11-3-8.

7. This Response is filed solely for the purpose of clarifying ownership and possession of the personal property which may be subject to taxation by the Sheriff. In all other respects, Duncan, SMI and TR&L concur in the relief sought by the Trustee.

Dated this 1st day of September, 2021.

SMI, LLC, TR&L, LLC, and
ROY BAKER DUNCAN, II
By Counsel,

/s/ Kathy M. Santa Barbara

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing ***RESPONSE OF SMI, LLC, TR&L, LLC, AND ROY BAKER DUNCAN II TO OBJECTION OF TRUSTEE TO PROOF OF CLAIM NO. 5 FILED BY THE SHERIFF OF HARDY COUNTY*** was filed and served via the Court's CM/ECF system on this the 1st day of September, 2021.

/s/ Kathy M. Santa Barbara
Kathy M. Santa Barbara (WVSB #5960)