UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re: NOSTRUM LABORATORIES, INC., Debtor.	Case No.: 24-19611 Chapter 11 Honorable John K. Sherwood, U.S.B.J.

OBJECTION OF CITIZENS BANK, N.A. TO APPLICATION FOR ALLOWANCE OF FEES AND REIMBURSEMENT OF EXPENSES FOR ANSELL GRIMM & AARON, P.C.

Citizens Bank, N.A. (**"Citizens"**), by and through its undersigned counsel, objects to the *Application for Allowance of Fees and Reimbursement of Expenses for Ansell Grimm & Aaron, P.C.* [Docket No. 273] (the **"Fee Application"**), filed by Ansell Grimm & Aaron, P.C. (**"Applicant"**), former counsel to Nostrum Laboratories, Inc. (**"Debtor"**).

INTRODUCTION

1. Citizens objects to the Fee Application to the extent that certain fees and expenses sought by the Fee Application fail to meet the standard set forth in 11 U.S.C. § 330 and Rule 2016-1 of the Local Bankruptcy Rules for the District of New Jersey (**"D.N.J. LBR"**). The

objectionable fees and expenses represent work performed that was either (1) duplicative or vague; (2) unnecessary to the administration of the bankruptcy case; (3) not reasonably likely to materially benefit the Debtor's estate; or (4) that may not be paid from the Carve Out or Cash Collateral under ¶ 12 of the Final Cash Collateral Order (as those terms are hereinafter defined).

STATEMENT OF FACTS

2. On September 30, 2024 (the **"Petition Date"**), the Debtor commenced a case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (the **"Court"**). The Debtor is operating its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On October 21, 2024, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the **"Committee"**).

4. Prior to the Petition Date, Investors Bank, predecessor by merger to Citizens, extended three credit facilities to Nostrum: (a) a $5 million line of credit/term loan; (b) a $12 million revolving line of credit; and (c) a $5 million term loan (collectively, the **"Prepetition Loans"**). In connection with the Prepetition Loans, Citizens holds liens extending to all of the Debtor's assets and all cash and cash proceeds thereof (the **"Cash Collateral"**). Since the Petition Date, the Court has entered a series of orders authorizing the use of Citizens' Cash Collateral by the Debtor subject to certain limitations, *see* Docket Nos. 44, 72, 100, and 130, culminating in the *Final Order (I) Authorizing the Debtor to Utilize Cash Collateral to (A) Pay Postpetition Associates' Wages, Salaries, Other Compensation and Reimbursable Expenses, (B) Continue the Associate Benefits Programs, and (C) Continue to Pay Key Vendors; and (II) Granting Related Relief* [Dkt. No. 186] dated December 11, 2024 (the **"Final Cash Collateral Order"**).

5. The Final Cash Collateral Order provides in pertinent part that:

> Notwithstanding anything to the contrary in this Final Order, no Collateral (including without limitation, Cash Collateral) or the proceeds thereof, and no portion of the Carve-Out may be used to pay any fees or expenses or claims for services rendered by any of the professionals retained by the Debtors, by the Creditors' Committee, by any other creditor or other party in interest, by any other committee, by any trustee appointed in this Chapter 11 Case or in any Successor Case, or for any other party to (i) request authorization to obtain any post-petition loans or other financial accommodations pursuant to section 364(c) or (d) of the Bankruptcy Code without approval of the Prepetition Lender, (ii) investigate, assert, join, commence, support, prosecute or finance the initiation or prosecution of (x) any potential or actual action or claim, counterclaim, cross-claim, action, proceeding, arbitration, application, motion, objection, setoff, or defense against the Prepetition Lender, or any of its officers, directors, employees, agents, attorneys, affiliates, partners, assigns, or successor, in their capacity as such, or (y) any other contested matter or adversary proceeding, in each case seeking any order, judgment, determination, or similar relief against, or challenging the claims or liens of, in any capacity, the Prepetition Lender, or any of its officers, directors, employees, agents, attorneys, affiliates, partners, assigns, or successors, with respect to any transaction, occurrence, omission, or action, including, without limitation, (A) any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions; (B) any action relating to any act, omission, or aspect of the relationship between the Prepetition Lender, on the one hand, and the Debtor or any of its affiliates, on the other; (C) any action with respect to the validity or extent of the Prepetition Credit Obligations, or the validity, extent, or priority of the Prepetition Liens or the Replacement Liens; (D) any action seeking to invalidate, set aside, avoid, recharacterize or subordinate, in whole or in part, the Prepetition Liens or the Replacement Liens; or (E) any action that has the effect of challenging the Prepetition Lender in respect of its liens and security interests in the Cash Collateral or the Collateral or impair its rights and remedies under the Prepetition Credit Documents or this Final Order. For the avoidance of doubt, nothing herein shall prevent the Debtor from contesting the occurrence or continuance of any Event of Default. Notwithstanding the above, not more than $35,000.00 of the Carve-Out apportioned to the Creditors' Committee's professionals may be used for liens or claims investigations (and not prosecution) against the Prepetition Lender.

See Final Cash Collateral Order ¶ 12.

6. On October 7, 2024 – just a week after the Petition Date – Applicant was substituted for Debtor's original counsel, Greenbaum Rowe Smith & David, LLP. *See Notice of Motion for an Order Approving the Retention of Ansell Grimm & Aaron, P.C. as Bankruptcy Counsel Pursuant to 11 U.S.C. § 327 Nunc Pro Tunc to September 30, 2024* [Docket No. 69].

7. On January 15, 2025, Debtor filed an *Application for Retention of Professional and Certificate of Compliance with D.N.J. LBR 2014-1(A)* [Docket No. 224] (the **"Third Retention Application"**), seeking to replace Applicant with Broege, Neumann, Fischer & Shaver, L.L.C. The Third Retention Application states that "Applicant's present counsel" – i.e., Applicant – "has communicated its desire to withdraw as counsel," *see* Third Retention Application ¶ 3, suggesting that the substitution of counsel occurred at Applicant's request.

8. On February 19, 2025, Applicant filed its Fee Application. The Fee Application requests a total compensation payment of $358,708.79 for Applicant's 3.5 months of work as counsel for the Debtor. The amount requested is comprised of a compensation payment of $340,781.50 and an expense payment of $17,927.29. The Fee Application requests compensation for thousands of dollars for work adverse to Citizens that, pursuant to ¶ 12 of the Final Cash Collateral Order, may not be paid from the Carve Out or Cash Collateral, as well as compensation for fees incurred by multiple attorneys performing duplicative tasks, and for duplicative work performed to bring new counsel up to speed in light of Applicant's apparent request to withdraw as counsel.

ARGUMENT

9. Applicant's Fee Application fails to meet the standards set forth in 11 U.S.C. § 330 and D.N.J. LBR 2016-1 for the compensation of professionals employed pursuant to 11 U.S.C. § 327. Because Applicant fails to meet its burden with respect to its Fee Application, this Court should decline to award the full fee requested in the Fee Application. *In re 388 Route 22 Readington Holdings, LLC*, 2021 WL 6072534, *4 (D.N.J. Dec. 23, 2021) ("The fee applicant bears the burden of proving it has earned the fees requested and that the fees are reasonable.").

10. The Bankruptcy Code sets forth the limits on compensable fees and costs for professionals employed under Section 327 of the Code. Pursuant to Section 330(a)(3), in determining the reasonable compensation to be awarded to a professional:

> [T]he court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward completion of, a case under this title;
>
> (D) whether the services were preformed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue or task addressed;
>
> (E) … whether the person … has demonstrated skill and experience in the bankruptcy field; and
>
> (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). Further, the court shall not allow compensation for duplicative services or services that were not "(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. 330(a)(4)(A). Finally, fees incurred in connection with a fee application shall only be compensated to the extent the level and skill of the individual preparing the application was reasonably required to do so. 11 U.S.C. § 330(a)(6).

9. The Court's local rules require that fee applications of $10,000 or more include:

> a narrative explaining the nature of the work performed and the results achieved; and any circumstances not apparent from the description of services or that the applicant seeks to emphasize, including special employment terms, billing or expense policies, voluntary reductions, reasons for the use of multiple professional persons for a particular activity, and reasons for substantial time billed for a particular activity.

D.N.J. LBR 2016-1(a)(2).

10. To meet its burden to show that the fees requested are reasonable, "the applicant must submit fee applications with sufficient detail to enable the court to reach an informed decision." *388 Route 22 Readington Holdings*, 2021 WL 6072534 at *4. "In reviewing the applicant's submission, the bankruptcy court 'is obliged [to] carefully consider the documentation submitted by applicants for fees and expenses.'" *Id.* (*quoting Zolfo, Cooper & Co. v. Sunbeam-Oster Co., Inc.*, 50 F.3d 253, 263 (3d Cir. 1995)). "[T]he court should review a fee application to ensure the applicant exercises the same 'billing judgment' as do non-bankruptcy attorneys by, for example, writing off unproductive research time, duplicative services, redundant costs precipitated by overstaffing, or other expenses with regard to which the professional generally assumes the cost as overhead in corresponding non-bankruptcy matters, or for which analogous non-bankruptcy clients typically decline to pay." *In re Busy Beaver Bldg. Ctrs.*, 19 F.3d 833, 856 (3d Cir. 1994). "The Court has a duty to prevent abuses, and as such has discretion to reduce fees that are excessive or duplicative even where a spreadsheet is provided detailing the hours spent on a particular matter." *In re Manley Toys Ltd.*, 2018 WL 3213710, *9 (Bankr. D.N.J. June 21, 2018). "This duty to conduct an independent examination of fee applications is grounded in the 'court's inherent obligation to monitor the debtor's estate and to serve the public interest.'" *388 Route 22 Readington Holdings*, 2021 WL 6072534 at *4 *(quoting Busy Beaver*, 19 F.3d at 841).

I. Duplication of Effort

11. Applicant may not be compensated for fees incurred in connection with duplicative work. Here, as a result of new bankruptcy counsel entering the case not once but twice, the Fee Application reflects substantial duplication of effort. Applicant's Fee Application also contains numerous requests for compensation for services rendered by multiple attorneys

within its own firm performing the same tasks, with no explanation of why more than one attorney would be needed for the specific task, in contravention of D.N.J. LBR 2016-1.

12. The Bankruptcy Code prohibits compensation of attorneys for duplicative work. 11 U.S.C. § 330(a)(4)(A)(i); *Busy Beaver*, 19 F.3d at 856; *Manley Toys*, 2018 WL 3213710 at *9. The prohibition against duplication applies both to work performed by other professionals retained by the estate as well as to work performed by professionals representing the debtor within the same firm.

13. At a minimum, $5,460 should be withheld from Applicant's compensation award on account of fees incurred by Applicant to withdraw ($2,380 incurred between 12/9/2024 and 1/13/2024 for the withdrawal motion) and bring Debtor's new bankruptcy counsel up to speed ($3,080 incurred between 1/13/2025 and 2/7/2025). These fees did not benefit the estate, but rather the multiple changes in Debtor's counsel created additional cost and delay that prejudiced Citizens and Debtor's other creditors. Indeed, Applicant's own desire to withdraw from the representation seems to have necessitated the retention of Debtor's third counsel in less than six months. The already cash-strapped estate should not bear the cost of this decision.

14. Likewise, absent a compelling justification as contemplated by D.N.J. LBR 2016-1, Applicant should not be compensated for fees reflecting the duplication of effort of its own attorneys. *See In re ACT Mfg.*, 281 B.R. 468, 484 (Bankr. D. Mass 2008) (finding that when multiple attorneys from the firm representing Debtor bill for the same task, such as attending the same hearing, meeting or intra-office conference, such double billing may not be compensated). Applicant's time records, attached as Exhibit B to the Fee Application, include fees for duplicative work performed by attorneys within the firm. On several occasions, multiple attorneys were in attendance at meetings and hearings with no discernable role distinction among

them. For example, *four* attorneys (JGA, AJD, LAF, and NAB) attended the October 15, 2024 hearing on the *Emergency Motion of Citizens Bank, N.A. for Appointment of a Chapter 11 Trustee or, In the Alternative, Dismissal of this Chapter 11 Case* [Docket No. 20] (the **"First Emergency Motion"**) and the *Emergency Motion of Citizens Bank, N.A. to Prohibit Debtor's Use of Cash Collateral* [Docket No. 22] (the **"Second Emergency Motion"** and collectively with the First Emergency Motions, the **"Emergency Motions"**),[1] each billing 5.6 hours for hearing attendance and an average of 2 hours travel time, for a total of $13,437, of which at least $9,576 is unreasonable due to duplication. The same four attorneys attended the continued hearing on the Emergency Motions on October 23, 2024, each billing at least 8 hours for hearing attendance and at least 2 hours travel time, for total fees of $18,255, of which at least $13,305 is unreasonable due to duplication.

15. The Fee Application contains no detailed explanation of the necessity of the presence of multiple attorneys as required by the Bankruptcy Code and D.N.J. LBR 2016-1. *See ACT Mfg.*, 281 B.R. at 484 (finding that when a particular hearing or meeting requires the attendance of multiple attorneys, the fee application should set forth in detail the need for both attorneys' attendance). Applicant has the burden of proving the necessity of having multiple professionals attend meetings and hearings and it has failed to carry this burden. *See 388 Route 22 Readington Holdings*, 2021 WL 6072534 at *4. The fees requested by Applicant should be reduced by the amount charged for the unnecessary use of multiple attorneys at multiple hearings

[1] Applicant had largely transitioned the case to new counsel by the time Citizens filed the *Emergency Motion of Citizens Bank, N.A. to Compel the Debtor to Designate an Officer in Charge of the Sale Process or, In the Alternative, to Set a Hearing Date for a Re-Notice Of Citizens' Motion for the Appointment of a Chapter 11 Trustee* [Docket No. 250] (the **"Third Emergency Motion"**) on February 4, 2025.

and meetings and Citizens respectfully requests that the Court reduce the compensable fees of Applicant accordingly.

II. Fees and Costs Must Be Necessary and Reasonably Likely to Benefit the Estate

16. The Bankruptcy Code prohibits compensation for services that are either unnecessary for the administration of the case or not reasonably likely to benefit the debtor's estate. 11 U.S.C. § 330(a)(4)(A). Whether a service is "necessary" or reasonably likely to benefit the estate turns on whether the attorney exercised reasonable business judgment with respect to the size of the estate, the detriment to the estate without the service, and the likelihood of the service to benefit or aid in the administration of the estate. *Unsecured Creditors Committee v. Puget Sound Plywood, Inc.*, 924 F.2d 955, 958 (9th Cir. 1991).

17. Duplication of effort aside, at least $80,541.50[2] of fees were incurred to performed to oppose the Emergency Motions, which fees were neither necessary nor reasonably likely to benefit the estate. In addition to $13,437 incurred as a result of four attorneys attending the October 15, 2024, $31,719.50 was incurred to review and oppose the First and Second Emergency Motions and to prepare for that hearing. Between October 16, 2024 and the continued hearing on October 23, 2024, an additional $5,617.50 was incurred (in addition to $18,255 incurred to attend the October 23, 2024 hearing). An additional $11,512.50 was incurred to prepare for and attend the contested cash collateral hearing on November 5, 2024. Moreover, pursuant to ¶ 12 of the Final Cash Collateral Order, fees incurred in connection with the Emergency Motions may not be paid from the Carve Out or Cash Collateral.

[2] Citizens does not include in this figure fees related to budget discussions and other negotiations among the parties, which might have been incurred even if the Debtor had addressed cash collateral in a consensual fashion.

18. No benefit accrued to the estate, or could have reasonably been expected to accrue, from Debtor's opposition to Citizens' Emergency Motions. As a threshold matter, Citizens was forced to file the Emergency Motions because the Debtor did not negotiate the consensual use of Cash Collateral before filing its petition. Indeed, when Citizens filed the Emergency Motions a week after the Petition Date, the Debtor *still* had not moved for permission to use the Cash Collateral. Debtor's opposition to relief intended to address an emergency of its own making did not benefit the estate. To the contrary, the appointment of a Chapter 11 trustee would have benefitted the estate by facilitating a more orderly and efficient sale process. The estate would also have benefitted from an appointed trustee's diligent efforts to find and recover assets for the benefit of creditors. Debtor's opposition to the Emergency Motions served only to slow the bankruptcy process, to the detriment of the estate. Applicant has failed to carry its burden to demonstrate that the services related to the Emergency Motions were reasonably likely to benefit the estate, and in any event any associated fees may not be paid from the Carve Out or Cash Collateral.

19. Similarly, Applicant's fees include at least $13,461.50 related to *Debtor's Motion for an Order (I) Extending the Automatic Stay Under 11 U.S.C. § 362(a); (II) for a Preliminary Injunction; and (III) for a Temporary Restraining Order Pursuant to 11 U.S.C. § 105(a)* [Dkt. No. 154] (the **"Stay Motion"**)[3] did not benefit the estate but rather largely benefited Debtor's CEO, Nirmal Mulye, Ph.D. (**"Mulye"**) and Debtor's parent company, Nostrum Pharmaceuticals, LLC (**"NPLLC"**), to the detriment of Citizens (which opposed the Stay Motion). The Stay Motion sought to stay Citizens' District Court litigation against Mulye, which had largely concluded; as the only thing left for the District Court to do was to fix the amount of Citizens'

[3] Applicant's timekeeping records often refer to the Stay Relief Motion as the "105 motion."

judgment, there was little risk that the litigation would pose such a distraction as to undermine the Debtor's reorganization efforts. Moreover, the Final Cash Collateral Order bars any portion of the Cash Collateral or Carve Out from being used to pay the fees associated with the Stay Motion, which appear to equal at least $13,461.50.

20. Additionally, numerous time entries are simply too vague to allow the Court to determine whether the time spent was necessary and reasonably likely to benefit the estate. For example:

- time entries on 11/07/2024, 11/8/2024, 11/10/2024, 11/11/2024, 11/13/2024, 11/14/2024 (totaling $680.00) simply read "Confer with client";
- time entries on 11/18/2024 and 11/19/2024 (totaling $170.00) read "Correspondence with client," without specifying subject matter;
- a time entry on 1/8/2025 ($255.00) reads "Review and analyze" without identifying what was reviewed and analyzed;
- a 11/8/2024 time entry ($95.00) reads "Review notices regarding Lambourghini."

21. Where the skill and experience of an attorney outweighs the complexity or size of a task, the fees charged may be deemed unreasonable and consequently reduced by the court. For instance, in a fee application that seeks fees for the preparation of the fee application, the compensation must be based on the level of skill reasonably required to prepare the application. 11 U.S.C. § 330(a)(6). Likewise, compensation for the preparation of a fee application will be awarded to the extent "actual and necessary." *See, e.g., In re Nucorp*, 764 F.2d 655 (9th Cir. 1985). However, while compilation of detailed billing statements is necessary for the administration of the estate, the skill necessary to prepare such applications does not warrant time spent by a senior attorney. *In re Fibermark, Inc.*, 349 B.R. 385 (Bankr. D. Vt. 2006).

Rather, junior associates and administrative staff should assist in the drafting of these documents. *Id.* Here, Applicant seeks $8,587.50 in fees related to the preparation of the Fee Application, including $1,377.50 of shareholder time to "Review and categorize bill for Fee Application." A reduction is appropriate.

22. Finally, the Fee Application seeks reimbursement of "Miscellaneous expenses including photocopies, telephone, postage, mileage and faxes" in a total amount of $14,252.49. Without additional detail, it is impossible to determine if these expenses were reasonable and necessary, especially in this age of email and electronic noticing. Absent additional detail, $14,252.49 of the expenses sought ought to be disallowed.

CONCLUSION

WHEREFORE, the Citizens respectfully requests that this Court: (a) disallow at least $102,040.50[4] of the compensation requested in the Fee Application for the reasons set forth herein; (b) disallow at least $14,252.49 of the expenses sought in the Fee Application; and (b) grant such other and further relief as this Court deems necessary.

STRADLEY, RONON, STEVENS & YOUNG, LLP

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[4] The requested reduction comprises: (a) $5,460.00 incurred for the withdrawal and transition; (b) $80,541.50 relating to the Emergency Motions; (c) $13,461.50 relating to the Stay Motion; (d) $1,200.00 of excessively vague time entries; and (e) $1,377.50 of shareholder time spent on the Fee Application.