

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

In re:

PANTHERA ENTERPRISES, LLC

Case No. 2:19-BK-787
Chapter 11

Debtor in Possession.

**MOTION TO JOIN UNITED STATES TRUSTEE'S
MOTION TO DISMISS OR CONVERT**

NOW COMES Panthera Training, LLC ("Panthera Training"), by counsel, and in support of its motion to join into the United States Trustee's Motion to Dismiss or Convert [Doc. 112] pursuant to 11 U.S.C. §1112(b) states as follows:

FACTUAL BACKGROUND

1. Panthera Training is a Virginia limited liability company that is not related to the Debtor or the Debtor's subsidiary, Panthera Training Center, LLC ("Center"). (See "Affidavit of Robert Starer" ("Starer Aff.") attached hereto as Exhibit 1).

2. On June 1, 2018, Panthera Training leased the Debtor's 750-acre military and law enforcement personnel training facility located in Hardy County, West Virginia ("Facility").

3. Prior to June 1, 2018 Center conducted training courses at the Facility for both the Debtor and itself. See Starer Aff. at ¶3.

4. Center stopped conducting training courses at the Facility effective June 1, 2018. Center then subcontracted with Panthera Training to assume Center's two existing government training contracts. Likewise, Debtor subcontracted with Panthera Training to

conduct training under its sole contract, which is with the Drug Enforcement Administration ("DEA"). Center does not have a contract with the DEA. *See* Starer Aff. at ¶¶4 and 18.

5. Pursuant to its subcontract with the Debtor, in September, 2019, Panthera Training conducted a DEA training course. The DEA paid \$172,000 for the training, which was received by the Debtor on October 21, 2019, and generated a payable to Panthera Training in like amount. (*See* Doc. 63 (Debtor's October Operating Report), pages 7 (showing "Cash Receipts" of \$172,000 for DEA Training Contract) and 13 (showing \$172,100 deposited in the Debtor's bank account), and *see* Starer Aff at ¶ 19). The \$172,000 payable to Panthera Training, to date, has not been paid, and is the subject of a separate adversary proceeding.

6. Also, in the October Operating Report, under "Disbursements," Debtor showed \$134,160 disbursed to Center. *See* Doc 63, p. 8. The notation reads "Paid in error, will be refunded and shown on the November operating report." *See also* Doc 63, p. 18, showing \$172,000 deposited by the DEA and \$134,160 paid to Center, which is notated as "PTC Payment - Sept DEA Class." PTC is Panthera Training Center, i.e., Center. Center did not conduct the September DEA training for the Debtor. *See* Starer Aff. at ¶18.

7. At all times relevant, James V. Punelli ("Punelli") acted as Center's manager and as the Debtor's "responsible party". As the Debtor's responsible party, each time Punelli signed the Debtor's Operating Report he certified under oath that the Debtor's Operating Report was "true, accurate, and correct."

8. The \$134,160 that the Debtor disbursed to Center in October was not returned to the Debtor in November. Instead, the Debtor reported "there was a miscommunication/oversight during the month of November and the October 21, 2019 \$134,160 payment to Panthera Training Center was not refunded during the month of November as

planned, but has since been returned in December and will reflect the same on the next report."

See Doc 80, p. 6.

9. Debtor's December Operating Report shows cash receipts of \$100,000 (in two entries) from Center to the Debtor, which are noted as "Moving funds back from Oct Payment." See Doc 93, p. 7. On the same page, Debtor notes "the remaining \$34,160.00 that was paid to Panthera Training Center, LLC will be refunded and reflected on the January operating report." *Id.*

10. Page 13 of the December Operating Report also shows \$50,000 deposited on 12/6/2019 and 12/18/2019, noted as "DEA payment refund from PTC (Sept Class)." See Doc 93, p. 13. In addition, the same ledger shows \$44,464.80 paid to PT (Panthera Training), which is noted as "DEA payment to PT (Sept Class)." *Id.* However, this \$44,464.80 disbursement was not a payment for the DEA training; it was payment for training conducted by Training for Center.

11. As noted above, in September, 2019, Panthera Training conducted a training course pursuant to its agreement with Center, generating an invoice payable by Center in the amount of \$44,464.80. See Starer Aff., Exhibit 1.

12. Punelli represented that Center would pay the \$44,464.80 invoice by wire transfer. See Starer Aff. at ¶ 9.

13. Panthera Training received \$44,464.80 by wire transfer on December 6, 2019. See Starer Aff. at ¶ 10. However, the December Operating Report reflects that this \$44,464.80 disbursement was paid from the Debtor's account and not from Center. Debtor's Account Statement found at page 15 of Debtor's December Operating Report shows an outgoing wire # 014226 on 12/6/2019 for \$44,464.80. See Doc. 93, p. 11.

14. Panthera Training performed additional work under its agreement with Center in November, 2019, generating and sending an invoice payable by Center in the amount of \$30,200. Starer Aff., Exhibit B.

15. Punelli represented that Center would pay this \$30,200 invoice by wire transfer. See Starer Aff. at ¶13.

16. Panthera Training received \$30,200 by wire transfer on January 2, 2020. See Starer Aff. ¶ 14.

17. Debtor's January Operating Report shows a disbursement to Panthera Training for \$30,200, which is noted as "Payment for Sept 19, 2019 DEA Train." Doc. 98, p. 7. But again, this payment was not for the DEA training course; it was payment of a payable owed to Panthera Training by Center. The Debtor's Account Statement confirms a wire # 017897 on January 2, 2020 in the amount of \$30,200 was sent from the Debtor's account. *Id.* at p. 11.

18. Page 11 of the January Operating Report characterizes the \$30,200 payment to Panthera Traing on January 2, 2020, as "DEA payment to PT (Sept Class)." Doc 98, p. 11. Again, Debtor paid a payable that Center owed Panthera Training from the Debtor's account and disguised it by calling it a payment for the Debtor's DEA September Class.

19. As seen in the Debtor's January Operating Report, the remaining \$34,160 of the \$134,160 purportedly mistakenly paid to Center in October 2019 was not returned to the Debtor in January 2020.

20. Panthera Training performed further work under its agreement with Center in January, 2020, generating a second invoice to Center in the amount of \$30,200. Starer Aff., Exhibit C.

21. Panthera Training received \$30,200 by wire transfer on February 19, 2020. See Starer Aff. ¶ 17.

22. As with the other wire transfers received by Panthera Training to pay the Center payable, the funds were paid from the Debtor's account. Debtor's February Operating Report shows \$30,200 wired to "PT" (Panthera Training) on February 12, 2020 (# 009207) and February 19, 2020 (#003489). Doc 110, p. 11. Each is noted as "DEA payment to PT (Sept Class)." Doc 110, p. 12. The \$30,200 received by Panthera Training on February 19, 2020 was in payment for a course conducted by Panthera Training for Center. Panthera Training did not receive the other \$30,200 wire referenced in the Debtor's February Operating Report. Starer Aff. ¶ 16

23. In January, Debtor replaced the \$34,160 of the \$134,160 that was transferred to Center in October 2019. Doc 110, p. 14.

THE DEBTOR FILED FALSE MONTHLY OPERATING REPORTS

24. Each of Debtor's wire transfers initiated for payment of the Center payable addressed above misappropriated the Debtor's funds to pay Center's debts. Debtor's Operating Reports falsely represent that the Debtor was making payments on Debtor's obligations (i.e., to Panthera Training for the September 2019 DEA Training) when in fact, Debtor was paying its subsidiary's debts. This activity is unnecessarily depleting funds available to pay creditors.

25. When \$44,464.80 was wired to Panthera Training on December 6, 2019, in payment of Center's obligation to pay Panthera Training's September, 2019 invoice, the Debtor withdrew the funds from the Debtor's account and falsely reported the transaction in the

Debtor's December, 2019 Operating Report as payment on Debtor's obligation to Panthera Training for the Debtor's DEA contract work. Doc 93, page 13.

26. In a similar manner, when \$30,200 was wired to Panthera Training on January 1, 2020, in payment of Center's obligation to pay Panthera Training's November, 2019 \$30,200 invoice, the funds again were withdrawn from the Debtor's account and again the transaction was falsely reported in the Debtor's January, 2020 Operating Report as payment on Debtor's obligation to Panthera Training for the DEA contract work. Doc 98, p.7.

27. Later, when another \$30,200 was wired to Panthera Training on February 19, 2020 in payment of Center's obligation to pay Panthera Training's December 2019 \$30,200 invoice, Debtor withdrew additional funds from the Debtor's account and once again falsely reported the transaction in the Debtor's February, 2020 Operating Report as another payment on Debtor's obligation to Panthera Training for the DEA contract work. Doc 110, p. 8.

28. In each instance, Center had received payment from the government for the training work performed by Panthera Training, (Starer Aff. ¶18), but rather than cause Center to use those funds to pay its obligations, Debtor elected to deplete the Debtor's dwindling cash and misrepresent to the Court that it was properly applying the Debtor's funds in payment of the Debtor's obligations. Moreover, the operating reports do not reflect that the Debtor received funds from Center, other than funds that were due and owing to Panthera Training.

29. The result of the Debtor's false operating reports is that the Debtor has misled the Court and the Debtor's creditors into believing the Debtor disbursed \$104,864.80 in payment of the Debtor's obligations. The false reports conceal the fact that the Debtor has paid Center's obligations with the Debtor's funds, leaving the \$104,864.80 that the government paid to Center -- which should have been paid to Panthera Training -- in Center's account.

GROUND TO CONVERT TO CHAPTER 7

30. The Debtor's repeated filing of false operating reports in order to conceal the misappropriation of the Debtor's funds in payment of its subsidiary's debts constitutes "cause" as referenced in 11 U.S.C. §1112(b)(4) such as to support a motion to dismiss or convert. Or, at the very minimum, a chapter 11 trustee should be appointed to administer the bankruptcy estate. See In re 1243 20th Street, Inc., 6 B.R. 683, (Bankr. D.D.C. 1980) (finding that a transfer of \$60,000 to an affiliate by an insolvent debtor warranted appointment of an examiner under section 1104 of the Bankruptcy Code); See also In re Sharon Steel Corp., 86 B.R. 455 (Bankr. W.D. Pa 1988) (finding that appointment of chapter 11 trustee was necessary to maintain viability of Debtor's business where Debtor transferred significant assets to other companies under common control); and In re Tucker, 411 B.R. 530 (Bankr. S.D. Ga.) (finding that conversion to chapter 7 was proper where Debtor's monthly reports were incomplete, misleading, and materially false.

DEBTOR'S BURDEN TO AVOID CONVERSION

31. This Motion establishes cause to convert this case under 11 U.S.C. §1112(b)(2). The Debtor may avoid conversion only by establishing all of the following conjunctive conditions:

(a) Unusual conditions such that conversion is not in the best interest of creditors. [11 U.S.C. §1112(b)(2)];

(b) A reasonable likelihood that a plan will be confirmed within a reasonable period of time; [11 U.S.C. §1112(b)(2)(A)]; and

(c) Most importantly in the matter at hand, a reasonable justification for the acts and omissions of the Debtor, and that they will be cured within a reasonable time fixed by the Court [11 U.S.C. §1112(b)(2)(B)].

32. Panthera Training submits that there are no unusual circumstances that would prevent conversion of this case, and that it is beyond peradventure that the Debtor's acts cannot be reasonably justified.

WHEREFORE, Panthera Training requests that the Court convert this case to one under Chapter 7, and grant such further relief as this cause merits.

PANTHERA TRAINING, LLC

By Counsel

/s/ Douglas E. Kahle, Esq.
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E-mail: DKahle@basnightkinser.com

-and-

/s/ Zachary J. Rosencrance
Julia A. Chinchek (WV Bar No. 718)
Michael R. Proctor (WV Bar No. 9122)
Zachary J. Rosencrance (WV Bar No. 13040)
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E-mail: zrosencrance@bowlesrice.com

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

In re:

PANTHERA ENTERPRISES, LLC

Debtor.

Case No. 2:19-BK-787
Chapter 11

AFFIDAVIT OF ROBERT L. STARER

STATE OF VIRGINIA)

NORTHAMPTON COUNTY)

This day personally appeared before me, a Notary Public in and for the jurisdiction aforesaid, Robert L. Starer, Chief Executive Officer of Panthera Training, LLC, who, being duly sworn, states as follows:

1. Panthera Training, LLC, a Virginia limited liability company registered to transact business in West Virginia, ("Panthera Training") is a wholly owned subsidiary of Historic Arms Corporation, ("Historic Arms"). Historic Arms is owned by Robert L. Starer and his wife, Merle Starer.

2. On June 1, 2018 Panthera Training executed a commercial lease whereby it leased a 750 acre military and law enforcement personnel training facility located in Hardy County, West Virginia ("Facility") that was owned by Panthera Enterprises, LLC's (the "Debtor").

3. Prior to June 1, 2018, the Debtor's subsidiary, Panthera Training Center, LLC ("Center"), conducted training courses at the Facility for itself and for the Debtor.

4. Effective June 1, 2018, Center ceased conducting any training courses at the Facility and subcontracted with Panthera Training to assume and perform Center's obligations on Center's two existing government contracts.

5. Panthera Training is not related to the Debtor or Center.

6. Panthera Training conducted a course pursuant to its agreement with Center in September, 2019, generating an invoice payable by Center in the amount of \$44,464.90. (See "September, 2019 Invoice" attached hereto as Exhibit A).

7. Exhibit A is a true and accurate copy of an invoice sent by Panthera Training to Center for payment in September, 2019. (It should be noted that the Debtor, Center's parent company, filed for bankruptcy protection on September 13, 2019.)

8. On December 6, 2019, Mr. James Punelli ("Punelli"), Center's managing member, represented that Center would pay the \$44,464.80 invoice by wire transfer.

9. Panthera Training received \$44,464.80 by wire transfer on December, 6, 2019.

10. Panthera Training performed additional work under its agreement with Center in November, 2019, generating and sending an invoice payable by Center in the amount of \$30,200. (See "November, 2019 Invoice" attached hereto as Exhibit B).

11. Exhibit B is a true and accurate copy of an invoice sent to Center for payment in November, 2019.

12. In late December of 2019, Punelli represented that Center would pay the November, 2019 \$30,200 invoice by wire transfer in a few days.

13. Panthera Training received \$30,200 by wire transfer on January 2, 2020.

14. Panthera Training performed further work under its agreement with Center in January, 2020, generating a second invoice to Center in the amount of \$30,200. (See "January, 2020 Invoice" attached hereto as Exhibit C).

15. Exhibit C is a true and accurate copy of the \$30,200 January, 2020 Invoice sent to Center for payment.

16. Panthera Training received \$30,280 by wire transfer on February 19, 2020. Panthera Training did not receive a second \$30,200 wire transfer in February.

17. In each instance the undersigned confirmed that Center had received payment from the government for the courses conducted by Panthera Training.

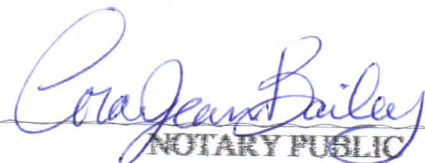
18. In addition to the work performed by Panthera Training for Center, in September, 2009, Panthera Training conducted a DEA training course pursuant to a subcontract with the Debtor, generating \$172,000 that was received by the Debtor in October, 2019. 100% of this amount was to be immediately forwarded by Debtor to Panthera Training.

Further the Affiant saith not.

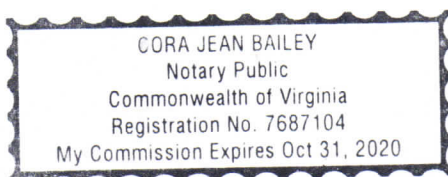

Robert L. Starer

Taken, subscribed and sworn to before me this 10 day of April, 2020.

My commission expires: 10/31/2020
Registration number: 7687104


NOTARY PUBLIC

[NOTORIAL SEAL]





INVOICE

PANTHERA TRAINING LLC
P.O. BOX 981
OLD FIELDS, WV 26845
PHONE: 304-530-5555 FAX: 304-530-5556
TAX ID: 83-075

DATE: SEPT 09, 2019
INVOICE # USSOCOM-BPA-090919-002
CALL # H9245419
SUB BPA # H92454-19
MASTER BPA # H92236-17
CLIN # 1

BILL TO:

PANTHERA TRAINING CENTER, LLC
ATTN: JAMES PUNELLI
215 DEPOT COURT, SE
LEESBURG, VA 20175

REMIT TO:

PANTHERA TRAINING, LLC
ESSEX BANK
ROUTING #
ACCOUNT #

ATTN: JAMES PUNELLI

19-Sep-19

PAYMENT TERMS

Net 15 days

DUE DATE

10/4/19

QTY	DESCRIPTION	Dates	UNIT PRICE	LINE TOTAL
<u>Pkg 1 / CLIN #1</u>				
1	5-Day Shooter / Driver Training (12 - students)	09 - 13 SEPT 2019	\$44,464.80	44,464.80
			\$0.00	\$0.00
			\$0.00	\$0.00
			\$0.00	\$0.00
			\$0.00	\$0.00
			\$0.00	\$0.00
			\$0.00	\$0.00
			Training Class Total	\$44,464.80
				\$0.00
			Invoice Total	\$44,464.80

Name: William A. White
Title: VP / GM
Signature: *William A. White*

EXHIBIT

A

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INVOICE

PANTHERA TRAINING LLC

P.O. BOX 981
OLD FIELDS, WV 26845
PHONE: 304-530-5555 FAX: 304-530-5556
TAX ID 83-075

Date: 12 NOV 2019
INVOICE #W913JT18A0005-0011
CONTRACT #W913JT1
ORDER/CALL #W913JT2
REQ# 02938900

BILL TO: Panthera Training Center LLC
ATTN: Jim Punelli
215 Depot Court SE
Leesburg, VA. 20175

REMIT TO:

Routing # Acct #
PANTHERA TRAINING LLC
PO Box 981
2506 Fish Pond Road
Old Fields, WV 26845

22-Nov-19

**PAYMENT TERMS
NET 30 DAYS****DUE DATE**

12/22/19

QTY	DESCRIPTION	UNIT PRICE	LINE TOTAL
1	CLIN #1 Driving Instruction (17-18 Nov 2019)	\$19,920.00	\$19,920.00
1	CLIN #2 Shooting Instruction (14-16 Nov 2019)	\$9,090.00	\$9,090.00
1	CLIN #3 Medical Instruction (12-13 Nov 2019)	\$1,190.00	\$1,190.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		Total	\$30,200.00
		Invoice Total	\$30,200.00

Name: William A. White
Title: VP/GM
Signature:

EXHIBIT

B

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INVOICE

PANTHERA TRAINING LLC
P.O. BOX 981
OLD FIELDS, WV 26845
PHONE: 304-530-5555 FAX: 304-530-5556
TAX ID: 83-075

Date: 16 JANUARY 2020
INVOICE #W913JT18A0005
CONTRACT #W913JT1
ORDER/CALL #W913JT
SUBCONTRACT/TO NUMBER: 2018-PE-PT-001
TO006-USA 1ST CIG

BILL TO: PANTHERA TRAINING CENTER, LLC
ATTN: JAMES PUNELLI
215 SOUTH DEPOT COURT, SE
LEESBURG, VA 20175

REMIT TO:
Routing # Acct #
PANTHERA TRAINING LLC
PO Box 981
2506 Fish Pond Road
Old Fields, WV 26845

ATTN: JAMES PUNELLI

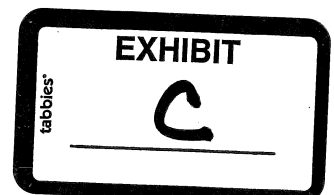
16-Jan-20

PAYMENT TERMS
NET 15 DAYS

DUE DATE
1/31/20

QTY	DESCRIPTION	UNIT PRICE	LINE TOTAL
1	CST Call #008 CLIN #1 Driving Instruction (10 - 11 JAN 2020)	\$19,920.00	\$19,920.00
1	CST Call #008 CLIN #2 Shooting Instruction (12- 14 JAN 2020)	\$9,090.00	\$9,090.00
1	CST Call #008 CLIN #3 Medical Instruction (15 -16 JAN 2020)	\$1,190.00	\$1,190.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		Total	\$30,200.00
		Invoice Total	\$30,200.00

Name: William A. White
Title: VP/GM
Signature:



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

In re:

PANTHERA ENTERPRISES, LLC,

Case No. 2:19-787

Chapter 11

Debtor-in-possession.

CERTIFICATE OF SERVICE

I, Zachary J. Rosencrance, do hereby certify that a true and correct copy of *Panthera Training, LLC's Motion to Join United States Trustee's Motion to Dismiss or Convert* has been served on all parties registered to receive notices by the Court's ECF System in this case, on this the **23rd day of April, 2020**.

/s/ Zachary J. Rosencrance
Zachary J. Rosencrance (WVSB # 13040)