

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

In re:

PANTHERA ENTERPRISES, LLC,

Case No.: 2:19-bk-00787

Chapter 11

Debtor.

**PANTHERA TRAINING, LLC’S MOTION TO COMPEL
PERFORMANCE UNDER SUBCONTRACT**

Panthera Training, LLC (“**Panthera Training**”), by and through its undersigned counsel, respectfully moves this Court (the “**Motion**”) for entry of an order: (1) compelling the Debtor pursuant to sections 105 and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”) to timely perform all obligations under the Subcontract (as defined herein). In support of the Motion, Panthera Training states as follows:

Jurisdiction and Venue

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
2. This is a core proceeding within the meaning of 28 U.S.C. § 157(b).
3. The statutory and legal predicates for the relief requested herein are 11 U.S.C. §§ 105 and 365.

Relevant Background

4. On September 13, 2019 (the “**Petition Date**”), Panthera Enterprises, LLC (the “**Debtor**”) filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code.
5. As of June 1, 2018, the movant, Panthera Training, the Debtor, and Panthera Training Center, LLC (the “**Center**”) executed a subcontract (the “**Subcontract**”).
6. Pursuant to the Subcontract, Panthera Training conducts training courses

for members of the United States Army and United States Drug Enforcement Agency (the “**Clients**”) upon their issuance of task orders or call orders as provided in three contracts (the “**Contracts**”) on which either the Debtor or the Center is the prime contractor. Additionally, Panthera Training provides all of the supplies and related services necessary to conduct the training courses.

7. Panthera Training conducts the training courses on a 750 acre multi-venue training facility located in Hardy County, West Virginia (the “**Facility**”) that includes, without limitation, tactical driving tracks, a vehicle obstacle course, shooting ranges, a live fire shoot-house, a Mobile Operations Urban Training combat town, an FAA approved helicopter landing pad, an armory and explosives vault, multiple classrooms, on-site dining facilities and off-site lodging.

8. The training conducted by Panthera Training provides critical tactical skills to the Clients’ employees in preparation for deployment or other activities.

9. Panthera Training has exclusive custody, control and possession of the Facility for the next forty-one (41) years pursuant to the terms of a Commercial Lease executed on or about June 1, 2018, by and between Panthera Training, as tenant, and the Debtor, as landlord (the “**Lease**”).¹

10. Prior to Panthera Training, the Debtor rented the Facility to its subsidiary Panthera Training Center, LLC (“**Center**”). Center defaulted in the payment of rents due under the prior lease thereby resulting in that lease’s termination.

¹ 11 years remain in the base term with three 10-year options that Panthera Training intends to exercise.

11. Center's default in its obligations under the prior lease caused the Debtor to default in its payment obligations on two promissory notes dated August 21, 2013 and July 2, 2014, payable to the West Virginia Economic Development Authority ("**WVEDA**").²

12. As a result, on or around February 28, 2018, the WVEDA demanded that the Debtor pay the WVEDA notes in full. The Debtor was unable to meet this demand and requested that Panthera Training enter into the Lease to generate sufficient cash flow to prevent the WVEDA from foreclosing upon the Facility.

13. Further, Panthera Training agreed to pay, and has paid, base rent in the amount of \$52,000.00 per month directly to the WVEDA since July 1, 2018.

14. Neither the Debtor nor Center is capable of generating sufficient income under the Contracts to benefit the bankruptcy estate. In fact, the Debtor and Center have acknowledged their inability to perform the obligations required under the Contracts as set forth in that certain Agreement effective as of June 1, 2018, by and between the Debtor, Center, and Panthera Training (the "**Agreement**"). Absent performance by Panthera Training, the Debtor and Center are unable to generate revenue under the Contracts.

15. As a result, pursuant to the Agreement the Debtor and Center assigned and conveyed to Panthera Training their respective rights to all contracts that involve the use of portions of the Facility for any activities, demonstrations, or training and teaching operations.

16. The Debtor's sole obligation under the Subcontract is to send invoices for the work performed by Panthera Training, and immediately forward to Panthera Training all payments received on the invoices.

² The WVEDA notes are secured by first deeds of trust on the Facility.

17. In exchange, Panthera Training pays the Debtor \$20,000.00 per month. Panthera Training's performance under the Subcontract has the potential to generate approximately \$960,000.00 for the benefit of the Debtor's bankruptcy estate over the next four (4) years.

18. Panthera Training has fully performed all of its obligations set forth in the Subcontract without interruption since June 1, 2018. Most recently, Panthera Training conducted training operations pursuant to the Subcontract on September 19, 2019.

19. However, despite Panthera Training's good faith performance under the Subcontract, the Debtor has failed to forward Client payments in the approximate amount of \$220,000 due and owing to Panthera Training since the Petition Date. To the best of Panthera Training's knowledge, the Debtor has invoiced Clients for Panthera Training's services rendered pursuant to the Subcontract, and payments either have been made or will soon be made to the Debtor.

20. To avoid any interruption in the services Panthera Training provides under the Subcontract to the Clients, Panthera Training asks this Court to compel the Debtor to timely perform its obligations under the Subcontract.

Argument

21. The Subcontract requires the Debtor to route payments directly to Panthera Training when possible. In all other instances, the Debtor is required to wire payment to Panthera Training immediately upon receipt.

22. Despite the clear language of the Subcontract and Panthera Training's good faith performance under the Subcontract, the Debtor is wrongfully withholding funds due and owing to Panthera Training for training services provided pursuant to the Subcontract.

23. For example, during June of 2019, the Debtor received approximately \$172,000.00 from the United States Drug Enforcement Administration for work performed by Panthera Training. Despite the clear language of the Subcontract, the Debtor unilaterally sent only \$70,000.00 to Panthera Training instead of forwarding the full payment of \$172,000.00. Because of the Debtor's financial embarrassment, a creditor of the Debtor garnished the Debtor's account and received payment of \$97,782.94 that was to be directed to Panthera Training for its performance under the Subcontract.

24. As of the date of this Motion, the Debtor has withheld approximately \$220,000 from Panthera Training since the Petition Date. Additional payments will become due as Panthera Training continues to provide training services pursuant to the Subcontract.

25. Further, the Debtor has circumvented the ordinary course of payment and communication as set forth in the Subcontract. Specifically, the Debtor has engaged the Clients to advise that payments for training services should not be made directly to Panthera Training.

26. In addition, the Debtor has attempted to obstruct communications between Panthera Training and the Clients by causing incoming emails addressed to Panthera Training to be redirected to the Debtor and/or its agents.

27. During the first half of October, 2019, Panthera Training learned that the Debtor inserted itself into communications between Panthera Training and a prospective customer, causing confusion for the prospective customer as to who was operating the Facility. As a result, Panthera Training lost a \$21,000 business opportunity. Such conduct is in clear violation of the Agreement.

28. Absent an order compelling the Debtor to perform its obligations under the Subcontract, Panthera Training will continue to suffer harm, including, but not limited to

damaged client relations and decreased cash flow due to the Debtor's failure to wire payment for training services performed by Panthera Training pursuant to the Subcontract and the Debtor's interference with Panthera Training's client communications. As a result of the Debtor's conduct, the bankruptcy estate may be deprived of a sizable future income stream.

29. Based upon the foregoing, Panthera Training respectfully requests that this Court compel the Debtor to perform its obligations under the Subcontract to prevent further harm to Panthera Training and to maximize the value of the bankruptcy estate.

Conclusion

WHEREFORE, Panthera Training respectfully requests that the Court enter an Order; (1) compelling the Debtor to timely perform all obligations under the Subcontract, (2) directing the Debtor to cease and desist interfering with or injecting itself into communications between Panthera Training, the Clients and prospective clients, and (3) granting such additional relief as the Court deems just and proper.

PANTHERA TRAINING, LLC

By Counsel

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CERTIFICATE OF SERVICE

I, Julia A. Chincheck, do hereby certify that a true and correct copy of ***Panthera Training, LLC's Motion to Compel Performance Under Subcontract*** and proposed ***Order Granting Panthera Training, LLC's Motion to Compel Performance Under Subcontract*** has been served on all parties registered to receive notices by the Court's ECF System in this case, on this **18th** day of **October, 2019**.

/s/ Julia A. Chincheck
Julia A. Chincheck (WVSB # 718)